United States Court of Appeals

for the Second Circuit

APPENDIX

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74-2278 5

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA ex rel. JEFFREY FOSTER,

Petitioner-Appellant,

- against -

JAMES R. SCHLESINGER, Secretary of Defense, JOHN W. WARNER, Secretary of the Navy, and ADMIRAL JOHN N. SHAFFER, Commandant, Third Naval District, New York,

Respondents-Appellees.

JOINT APPENDIX

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RELEVANT DOCKET ENTRIES

Date	Filings--Proceedings
7-15-74	Filed Petition for Writ of Habeas Corpus.
7-15-74	Filed petitioner's affdvt. and show cause order for a preliminary injunction and temporary restraining order. Ret. 7-25-74 at 10:00 o'clock in the forenoon. DUFFY, J.
7-15-74	Filed memorandum of petitioner in support of application for preliminary injunction and petition for writ of habeas corpus.
9-13-74	Filed affdvt. in opposition by Louis G. Corsi, AUSA.
9-13-74	Filed Govt's memorandum of law.
9-13-74	Filed opinion and order #41167. Petitioner's application for a writ of habeas corpus is denied. In light of the foregoing opinion the motion for the preliminary injunction is mooted... So ordered.... Duffy, J.... Mailed notice.
9-19-74	Filed affdvt. & notice of motion staying petitioner's order to report for active duty in U.S. Navy.... Ret. 9-24-74.
9-25-74	Filed memo endorsed on motion filed 9-19-74. Motion granted. So ordered-DUFFY, J. (m/n)
9-19-74	Filed petitioner's notice of appeal from decision and order entered 9-13-74. Copy to: U.S. Atty. Entered - 9-30-74.

PETITION FOR WRIT OF HABAES CORPUS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES ex rel JEFFREY FOSTER,

Petitioner,

-against-

JAMES R. SCHLESINGER, Secretary of Defense, JOHN W. WARNER, Secretary of the Navy and ADMIRAL JOHN N. SHAFFER, Commandant Third Naval District, New York,

Respondents.

- x

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Now comes the petitioner, LT. JEFFREY FOSTER, by his attorneys, RABINOWITZ BOUDIN & STANDARD and respectfully petitions this Court for a Writ of Habaes Corpus to inquire into the detention of petitioner, who is now unlawfully restrained of his liberty in violation of the United States Constitution, Department of Defense Directive 1300.6 and United States Navy Regulation BUPERSMAN 1860120 and alleges and shows as follows:

1. The petitioner, a doctor, is a lieutenant in the

United States Navy. He is a citizen of the United States and of the State of New York, and is presently assigned to the Commandant, Third Naval District in New York. He has received orders directing that he report to the National Naval Medical Center, Bethesda, Maryland for indoctrination on July 15, 1974 at not later than 1600 hours, and thereafter to the Naval Drug Rehabilitation Center, Jacksonville, Florida for two years of active service.

2. The respondents are as follows:

i) Respondent SCHLESINGER is the United States Secretary of Defense, upon information and belief a resident of the District of Columbia and is sued in his official capacity only;

ii) Respondent WARNER is the Secretary of the Navy, on information and belief a resident of the District of Columbia, who is sued in his official capacity only;

iii) Respondent SCHAFFER is the Commandant of the Third Naval District, on information and belief a resident of New York, New York, who is sued in his official capacity only.

3. The petitioner, pursuant to United States ENSIGN 1915 PROGRAM, in or about September 1966 accepted an appointment and commission in the Medical Corps, United States Naval Reserve. Subsequently, in late 1970 he participated in the Berry Plan for doctor deferment during completion of training.

4. During the period 1966 - July 1973, the petitioner completed his medical school studies and psychiatric internship and residency program. In that period, he never received any annual renewal of his contract.

TENDER OF RESIGNATION OF COMMISSION
ON GROUNDS OF CONSCIENTIOUS OBJECTION

5. On or about August 1973, the petitioner received a communication from Captain J. N. Trone, Chief, Planning and Special Projects, Medical Group Branch Department of the Navy, suggesting that the petitioner submit a formal request for Berry Plan deferrment to avoid immediate activization. (EXHIBIT A annexed hereto.)

6. On September 18, 1973 the petitioner, following the crystallization of a long evolving abhorrence of war in any form, tendered his resignation from the United States Naval Reserve. In tendering his resignation, he

indicated that:

> "All war to me is a tragic failure of rational and peaceful communicative attempts at solving conflict. I can never condone it in either overt or subtly covert form, including that of being a non-combative participant.
>
> I do not believe that any professional act of mine were I to be on active naval duty, could be dissociated from direct or indirect support of the Naval war component of the United States Government Armed Forces. My objection to all war is such that I could not function as a Naval psychiatrist or physician. For these reasons and for the good of the Naval Service I respectfully request that my resignation from the Naval Reserve be approved as soon as possible." (EXHIBIT B annexed hereto.)

7. Thereafter, on October 1, 1973 the petitioner received a response to the letter of tender of resignation from the Commandant, Third Naval District, which referred to the petitioner's ostensible request for discharge as a Conscientious Objector, stating . . . 1) Your request for discharge as a Conscientious Objector, reference (a), was received this dated. (EXHIBIT C annexed hereto .)

8. On October 26, 1973, the petitioner wrote to the Commandant referring to his tender of resignation and

indicated that it was his:

> "understanding that a tender of resignation is a distinctly different procedure from a request for discharge as a Conscientious Objector . . . [and that] perhaps confusion arose from the fact that the basic grounds I cited for offering my resignation concerned conscientious objection to all war in all forms. Although I do feel that I would qualify as a conscientious objector as outlined by your enclosure, this is not what I have applied for." (EXHIBIT D annexed hereto.)

9. On or about November 1, 1973, the Commandant placed on petitioner's letter tendering resignation the phrase "FIRST ENDORSEMENT . . . LIEUTENANT FOSTER DOES NOT WISH TO REQUEST DISCHARGE AS A CONSCIENTIOUS OBJECTOR" (EXHIBIT E annexed hereto) and returned the letter to him.

10. In immediate response to receipt of this endorsement, on November 5, 1973, the petitioner wrote to the Commandant stating:

> "I think that your phrase 'Lieutenant Foster does not wish to request discharge as a conscientious objector' is an unwarranted inference from my October 26th letter . . . .
>
> It does not seem to follow that my reiteration on October 26th that I had actually tendered my resignation could lead to your conclusion that I 'do not wish to request a discharge as a conscientious objector'.

> Instead, it should simply be understood that I was asking for affirmative action on the only procedure I have in fact requested to date. I hope this clarifies any possible misunderstanding of my position." (EXHIBIT F annexed hereto.)

11. On January 18, 1974, following unsolicited and apparently erroneous reclassification of petitioner to the inactive reserve, which permitted him to resign his commission, the Bureau of Naval Personnel wrote to the petitioner acknowledging administrative error and stated:

> "A review of your record indicates that you were transferred to the Stand-By Reserve — Inactive, on 1 October 1973. Therefore, reference (a) which transfers you to the Stand-By Reserve — Inactive on 30 December 1973 is cancelled. Any inconvenience caused is regretted." (EXHIBIT G annexed hereto.)

12. On January 29, 1974, petitioner responded to the Chief of Naval Personnel indicating puzzlement and confusion as to the procedures being followed, including action on his tender of resignation. The letter closed by stating:

> "I shall await your response as to whether you can continue to process my tender of resignation as requested. Also, I would appreciate an explanation as to why I was transferred on October 1, as well as why I was not informed of this status change.

> If you cannot further process my resignation of January 27th, then please inform me just what my options are now that I am in the USNR-S2 status nonetheless." (EXHIBIT H annexed hereto.)

13. On the same date, petitioner wrote to the Secretary of the Navy expressing the same confusion and request expressed in ¶12 above. (EXHIBIT I annexed hereto.)

14. Thereafter, on March 4, 1974, the Commandant of the Third Naval District forwarded to petitioner an enclosure from the Bureau of Naval Personnel stating in pertinent part:

> "Through an administrative error, you were not identified as a participant in the Berry Plan. Had that fact been known, you would not have received the type of correspondence that has recently been addressed to you. Your status as a member of the ready reserves remains in effect. (EXHIBIT J annexed hereto.)

APPLICATION FOR DISCHARGE AS CONSCIENTIOUS OBJECTOR

15. On March 20, 1974, the petitioner submitted a formal and detailed application for discharge from the United States Naval Reserve on the grounds of conscientious objection to participation of any kind in war of any form. That application offered a detailed description of his belief, including a critical analysis of the

development of those beliefs and an explicit indication of when, precisely, his long-held abhorrance of war and killing crystallized. (EXHIBIT K annexed hereto.) That moment of maturation was expressed by the petitioner inter alia as follows:

> "My views solidified in the late summer of 1973. This occurred due to the cumulative effects of many factors described above--with the particular coincidence of two events at this time. First, I received an unexpected certified letter from the Navy on August 8th from a Capt. Trone (B UMED--3174--mm; August 3, 1973) requiring me to submit a Berry Plan deferment request within 10 days or be called to immediate active service. I had no idea what "request" the Captain was talking about-- and was shocked at the totally unexpected possibility of immediate active duty! I hurriedly wrote the Captain that very day to advise him that during all my residency years I had never been asked to submit any such request form and to ask that he provide me with this form. However, the idea of active military duty now persisted in my thoughts for the very first time in the seven years since I had joined the ENSIGN 1915 PROGRAM.
>
> Second, the Captain's letter came at a time just before my vacation which was an extremely difficult period for the young woman I was treating who was dying of leukemia (see pages 10-12 of the dying patient case presentation) and about whom I was quite concerned. During my vacation I received letters from her that revealed her

terrible emotional and physical distress although she had just left the hospital. Even her handwriting had deteriorated! My concerns about her welfare, coupled with the sudden threat of being called to active duty, gave me much to consider over that vacation regarding my views on actual military service and what course of action I should take. On September 18, 1973 I sent a letter of resignation from the U.S. Naval Reserve to the Commandant of the Third Naval District--and a copy of this letter to Captain Trone (see attached copy of the resignation letter). The reasons cited for tendering my resignation were those of conscientious objection to all war in all forms. I have considered myself a conscientious objector since that time."

16. In support of his application for discharge, the petitioner submitted a series of reference letters. (EXHIBIT L, i-v annexed hereto;) i) letter of RoseMarie A. Foster, ii) letter of Kenneth Gordon, iii) letter of Susan Gordon, iv) letter of Paul Spring, v) letter of Joel Markowitz, M.D..

17. Dr. Joel Markowitz, the petitioner's psychiatrist over a period of fourteen years and subsequently a witness at petitioner's hearing, in his letter of recommendation stated:

"From the time I first knew him, he

> abhorred violence and aggression. He has always demonstrated a blanket negative response to war, crime and other destructive activities.
>
> Over the past several years his beliefs have strengthened in this direction, particularly as he discussed the horrors of the war in Viet Nam. His investment in becoming a doctor, in healing people, correspondingly increased.
>
> I would say that his anti-war attitudes crystallized in the summer of 1973 and I would definitely consider them consistent with the classification of Conscientious Objector." (Emphasis supplied) (EXHIBIT L-v annexed hereto.)

18. Consistent with the requirements of BUPERSMAN 1860120, on April 22, 1974 the petitioner was interviewed by a psychiatrist, Lt. Commander D. L. Thomasson who, while taking no position with regard to the petitioner's sincerity, noted that:

> ". . . [H]owever, it was not until the summer of 1973, when he began to receive communications regarding his obligated military service that he began to seek ego-syntonic ideals and means for avoiding that obligation.
>
> In spite of his psychiatric training, throughout his application and in the interview FOSTER addresses himself only to intellectualizing the universal concepts which he interprets to mean that he should not be asked to fulfill his ob-

ligation as a military medical officer."
(EXHIBIT M annexed hereto.)

19. On the same date, also consistent with Naval regulation, the petitioner was interviewed by Chaplain A. J. Otto, Commander CHC. The Chaplain's conclusion following the interview was that:

> "in my opinion DR. FOSTER is weakly sincere in his convictions that he could never participate in any active war. It is my further opinion that DR. FOSTER'S claim of Conscientious Objection is based upon a rare personal and moral code which even he has great trouble in defining."
> (EXHIBIT N annexed hereto.)

20. In response to the report of interview with psychiatrist and chaplain which he received, the petitioner transmitted to the Commandant a summary of the interviews which in critical aspect were sharply at variance with the conclusions reached by both interviewers. (EXHIBIT O annexed hereto.)

21. On April 24, 1974, the Bureau of Naval Personnel forwarded Dr. Foster's indoctrination and activization orders to him and directed him within seven days of receipt of orders to report for a medical examination (EXHIBIT P annexed hereto). Dr. Foster responded, indi-

cating that he was unable to comply with an order to report for that pre-activization physical examination.

22. Pursuant to BUPERSMAN 1860120, the participant was thereafter the object of a hearing before the "Investigating Officer". The mandate of that investigating officer is as follows:

> "The investigating officer shall conduct a hearing on the application to afford the applicant an opportunity to present any evidence he desires in support of his application; to enable the investigating officer to ascertain and assemble all relevant facts; to create a comprehensive record; and to facilitate an informed recommendation by the investigating officer and an informed decision on the merits by higher authority. The investigating officer shall actively and critically examine the applicant's beliefs, and any failure or refusal of the applicant to submit to questioning under oath or affirmation may be considered by the investigating officer in making his recommendation and evaluation of the applicant's claim. If the applicant fails to appear at the hearing without good cause, the investigating officer may proceed in his absence and the applicant will be deemed to have waived his appearance." ¶9(b)

23. Pursuant to that regulation, a hearing was held on May 31, 1974 before Commander Joseph C. Sweeney, a lawyer, Professor of Law at Fordham University Law School

and the Commanding Officer of Naval Reserve Law Company 3-6.

24. At that hearing, testimony was taken from the petitioner and a witness, Dr. Joel Markowitz, the petitioner's psychiatrist. He testified that throughout Dr. Foster's therapy of some fourteen years "he spoke of war, violence, aggression being bad, evil. He spoke in moral and ethical terms." (EXHIBIT Q 7 annexed hereto.)

25. Commander Sweeney attempted to elicit from Markowitz a distinction between the petitioner's general and abstract abhorrance of violence and his recent views. He asked:

> "QUESTION: Did you observe a change in quality or quantity of the nature of this belief between 1960 and September 1973?
>
> ANSWER: I would say that since he has -- I have forgotten if it was in September or when, but since he suddenly had to face this situation his denial of the Navy situation has been broken. . . . (EXHIBIT Q 14-15 annexed hereto.)
>
> . . . [s]ince this sudden confrontation he has been very aware of the presence of the Navy, of the existence of the Navy, and all of a sudden he seems to be saying to me all the time, 'This is unthinkable. I can't be in a military organization. I will have nothing to do with military or-

> ganizations.' He never spoke of military organizations before except in a very distant and abstract way. (EXHIBIT Q 15.)
>
> So it is certainly as if something has crystallized in him. It is as if where there was denial before there is now an excessive preoccupation. It is as if he has never considered himself in any imminent military situation before this time." (EXHIBIT Q 15-16.)

26. In response to questioning of Dr. Markowitz by petitioner's counsel regarding the date of crystallization or maturation:

> "QUESTION: . . . Is it your view that his belief which he has always held as far as you know crystallized in a way in the period when he knew that he had to be activated? Is that your testimony?
>
> ANSWER: Yes.
>
> QUESTION: Is that the event which you find pertinent?
>
> ANSWER: That's certainly true. The war had always been some peripheral thing to him, however horrible. All of a sudden he was in the middle of it, you could say, and he was absolute in his attitude that anything military was unacceptable." (EXHIBIT Q 18, 19 annexed hereto.)

27. Following the hearing on June 21, 1974, the investigating officer reported to the Commandant, Third

Naval District, the results of his investigation. He indicated that, consistent with regulation, he had reviewed the petitioner's file, reviewed BUPERSMAN 1860120 and consulted applicable legal authorities as follows:

> United States v. Seeger, 386 U.S. 246; Welsh v. United States, 298 U.S. 333; Gillette v. United States, 401 U.S. 437; Fein v. SSB 7, 405 U.S. 365, and the following law review articles: Field, "Problems of Proof in Conscientious Objection Cases," and Zillman In Service Conscientious Objection: Courts, Boards and the Basis in Fact. (EXHIBIT R annexed hereto.)

Commander Sweeney concluded as follows:

> "At the outset it should be noted that subject officer's connection with the naval service has been minimal, he having been commissioned while a medical student under the Berry Plan in 1966 and without ever serving on active duty.
>
> At the Hearing, Dr. Joel Markowitz, M.D., a psychiatrist for twenty years and who has been consulted by subject officer for the past fourteen years, testified. Dr. Markowitz's views on conscientious objection to military service are opposite from those of subject officer. Dr. Markowitz testified

concerning the development of subject officer's moral and ethical beliefs and the origin of such beliefs. (See Record, pp. 3-23.)

Thereafter, Lieutenant Foster testified at his own request, under questioning by the undersigned (see Record, pp. 23-33). At the conclusion of his testimony Lieutenant Foster executed the Statement concerning Veterans Administration Benefits.

It is also noted that subject officer is willing to perform civilian work under the Conscientious Objection Program of the Selective Service System.

FACT:

It is considered that the claim of subject officer, as established by the totality of the record and by the Hearing in the case, has not been made frivolously, and that the minimum objective standards now established by law and regulation for conscientious objector discharge have been met.

Opinion:

By reason of the entire record and by reason of observation of the personal testimony and demeanor of Lt. Foster the undersigned is persuaded that Lt. Foster sincerely holds ethical beliefs which require him to refrain from participation in any war at any time.

Recommendation:

It is recommended that Lt. Foster be discharged from the naval service by reason of conscientious objection." (EXHIBIT R annexed hereto.)

28. By letter dated July 11, 1974, forwarded by mail and formally received by the petitioner on 13 July 1974, the Chief of Naval Personnel denied the petitioner's application for discharge as a conscientious objector. No specific findings of fact were made. In conclusory fashion, the Chief of Naval Personnel, ignoring the uncontradicted testimony of Dr. Markowitz, supra. ¶26 and the record as a whole, indicated:

> "2. Your application with all its supportive documents have been afforded careful and complete review. On the basis of this review it is apparent from the testimony of your Psychiatrist that prior to entry into the Navy you were opposed to war and killing. Your Psychiatrist stated that your non-violent attitudes haven't in any way been modified within the past 14 years. While your concerns and reservations may now be stronger there is nothing to indicate that your present beliefs are in substance and foundation any different than those you held before you accepted your commission. While the Chief of Naval Personnel recognizes your sincere desire for discharge your application and the attendant correspondence are not considered supportive of your request for discharge as a conscientious objector." (EXHIBIT S annexed hereto.)

29. This conclusion was reached despite the fact that the Naval Regulations BUPERSMAN 1860120 states:

> "Claims based on that objection growing out of experience prior to entering military service but which did not become fixed until entry into the service will be considered " ¶2(c).

30. Petitioner is entitled to discharge from the United States Navy by reason of his conscientious objection to participation in war based upon his sincerely held ethical beliefs which require him to refrain from participation in any war at any time.

31. The Bureau of Naval Personnel's finding that petitioner was a sincere Conscientious Objector prior to entry into the Navy and therefore not a basis for discharge is arbitrary and wholly without any basis in fact. The conclusion was reached by a person who had not met or interviewed petitioner and was contrary to the findings of the interviewing and investigating officers.

32. If the investigating hearing officer "who was knowledgeable in policy and procedures. . .relating to Conscientious Objector matters" (BUPERSMAN 1860120 ¶10) had found that petitioner was a conscientious objector before entering the Navy, he could not have recommended approval of the application. The disapproval by the

Department of the Navy was, therefore, contrary to Naval Regulations, Defense Department Directive and violative of due process in that there was no basis in fact.

33. Pursuant to BUPERSMAN 1860120 16(d), determination by the Chief of Naval Personnel shall be final with respect to the administrative separation of members and petitioner has therefore exhausted all of his administrative remedies.

34. No previous application has been made for the relief sought herein and irreparable injury will result to petitioner if this Court does not enjoin the Bureau of Naval Personnel's findings and order of activation.

WHEREFORE, petitioner respectfully prays that:

1. A Writ of Habeas Corpus issue herein directed to respondents commanding them to produce the body of the petitioner, LT. JEFFREY FOSTER, before this Court at a time and place to be specified, to the end that this Court may inquire into the cause of petitioner's detention, and that petitioner be ordered discharged from his detention and restraint for the reasons set forth in this petition.

2. Pending consideration and determination of petitioner's claim by this Court, an order be issued temporarily restraining and enjoining respondents from:

a) Issuing any orders to petitioner which would, directly or indirectly, remove him from the jurisdiction of this Court while this petition is pending;

b) Taking any action of any kind inconsistent with petitioner's moral and ethical beliefs during the pendency of the litigation;

c) Compelling respondents to produce before this Court petitioner's complete file, including all records, documents and evidence contained therein and for such other and further relief as may be just and proper.

Dated: New York, New York
July 13, 1974

RABINOWITZ, BOUDIN & STANDARD

BY:_____
MICHAEL B. STANDARD
Attorneys for Petitioner
30 East 42nd Street
New York, New York 10017
(212) OX 7-8640

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

JEFFREY FOSTER, being duly sworn, deposes and says that he is the Petitioner in the within proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters he believes them to be true.

Jeffrey R. Foster
JEFFREY FOSTER

Sworn to before me this
14th day of July, 1974.

Dorian Bowman
DORIAN BOWMAN
NOTARY PUBLIC STATE OF NEW YORK
NO. 60-0372375
Qualified in Westchester County
Commission Expires March 30, 1975

DEPARTMENT OF THE NAVY
BUREAU OF MEDICINE AND SURGERY
WASHINGTON, D.C. 20372

IN REPLY REFER TO
BUMED-3174-nm

3 AUG 1973

CERTIFIED MAIL

Lieutenant Jeffrey R. Foster, MC, USNR
The Mount Sinai Hospital
100th St. & Fifth Avenue
New York, New York 10029

Dear Doctor Foster:

This is in reference to your status under the Berry Plan.

It is noted that in response to this Bureau's previous notification you have not returned your Berry Plan form for the current training year. This action would seem to indicate you no longer desire a deferment. If you do desire a deferment, please forward your form by return mail.

Your response to this notification is requested within 10 days of the date of this letter. If your deferment form is not received, we will have no alternative but to call you to immediate active service.

Sincerely,

J. N. TRONE
Captain, MC, USN
Head, Planning and Special Projects
Medical Corps Branch
By direction of the Surgeon General

EXHIBIT B - LETTER OF JEFFREY R. FOSTER DATED SEPTEMBER 18, 1973

Certified Mail

Commandant
Third Naval District
Federal Office Building
90 Church Street
New York; New York

Dear Sir:

I hereby respectfully tender my resignation from the U.S.Naval Reserve and request that same be accepted on the grounds enumerated below. I understand that if my resignation is accepted I shall subsequently receive a Certificate of Honorable Discharge from the Naval Reserve.

The basic grounds for offering my resignation are my long-evolv and strongly held moral and ethical objection to war in all its form and ramifications. These sincere and deeply held beliefs have solid recently to the present point where I must follow the dictates of a higher law of conscience and submit my resignation from a commitment with which I now find myself no longer able to comply in any capacit In this vein, I am in receipt of a recent communication from Captain Trone (August 3, 1973; BUMED-3174-mm) requiring me to submit a forma request for Berry Plan deferment for this last year of my psychiatri training. Although I had never even seen such a request form before since having subsequently received it I am unable to complete and submit it due to my present conscientious objection to all war in all forms.

In the course of my psychiatric training I have studied by cli training and extensive readings the deeply irrational roots of viol as an abortive means of solving personal problems. These experienc have often reminded me of impressions gained through earlier politic science studies in college of the appallingly frequent, illogical, ineffective and needlessly destructive attempts at militarily solvi problems confronting larger groups of peoples and nations. My stud and professional training have been extremely instrumental, althoug by no means the exclusive components, in the recent solidification my personal beliefs that now result in the tendering of my resignat on grounds of conscientious objection to war in general.

As a psychiatrist my job is to expose and root out the irratio while encouraging in every way the rational and peaceful solution t personal and group problems. As a psychiatrist I will always pro-fessionally and personally extoll the rational and vigorously oppos the irrational and violent. All war to me is a tragic failure of rational and peaceful communicative attempts at solving conflict. I can never condone it in either overt or subtly covert form includ that of being a noncombatant participant.

I do not believe that any professional act of mine were I to be on active Naval duty could be dissociated from a direct or indirect support of the Naval war component of the United States Government Armed Forces. My objection to all war is such that I could not function as a Naval psychiatrist or physician. For these reasons and for the good of the Naval Service I respectfully request that my resignation from the Naval Reserve be approved as soon as possible.

Sincerely yours,

Lt. Jeffrey R. Foster, MC, USNR
#710039

cc: Capt. J.M.Irons, MC,USN
Head, Planning and Special Projects
Medical Corps Branch
Dept. of the Navy
Bureau of Medicine and Surgery
Washington, D.C. 20372

D-531/[illegible]:jp
[illegible]
1 Nov 1973

[illegible]

From: [illegible]
To: Secretary of the Navy
Via: Chief of Naval Personnel

1. Resignation is forwarded for your action. It [illegible] does not wish to request discharge as a conscientious objector.

[illegible]
By direction

Copy to:
Lt. [illegible] R. Foster, MC, USNR
[illegible]

EXHIBIT K - APPLICATION FOR DISHCARGE AS A CONSCIENTIOUS OBJECTOR

Certified Mail

Commandant, Third Naval District
Flushing and Washington Avenues
Brooklyn, New York 11251
Attention: Jean W. Hoag, code D-531

Subject: Application for discharge from the U.S. Naval Reserve on grounds of conscientious objection to participation of any kind in war in any form.

1) Date of application: March 20, 1974

2) Applicant's name: Jeffrey Robert Foster

3) Social security #: 070-34-4047

4) Selective service #: 30-10-42-1710

5) Service address: none

6) Permanent home address: 80 East End Avenue, New York, N.Y. 10028

7) Schools/colleges attended since age 16:
   A) Scarsdale High School, Scarsdale, N.Y.; age 16 (Nov. 1968)[sic]--June 1960; public
   B) Northwestern University, Evanston, Ill.; Sept.1960 --June 1964; private nonsectarian university where received B.A. degree as political science major
   C) Columbia University, New York, N.Y.; July 1964-- June 1966; private nonsectarian university where completed pre-medical studies
   D) New York Medical College, New York, N.Y.; Sept.1966 --June 1970; private nonsectarian college where received M.D. degree

8) Work since age 16:
A) Medical Intern in the Dept. of Medicine of New York Medical College--Metropolitan Hospital Center, New York, N.Y. from July 1970 to June 1971
B) Resident in Psychiatry at The Mount Sinai Hospital, New York, N.Y. from July 1971 to present

9) Former residences since age 16:
A) 11 Ogden Rd., Scarsdale, N.Y.; age 16 (Nov. 1968) --Sept. 1960
B) Northwestern University, Evanston, Ill. (dormitory and fraternity house); Sept. 1960--June 1964 [except summers when lived at (A)]
C) lived at (A) from June 1964--Sept. 1966
D) 30 East 95th St., New York, N.Y.; Sept. 1966--June 1968
E) 80 East End Avenue, New York, N.Y.; July 1968--present

10) Parents:
Father: Lawrence H. Foster; 11 Ogden Rd., Scarsdale, N.Y.; living
Mother: Gail A. Foster; 11 Ogden Rd., Scarsdale, N.Y.; living

11) Religious denomination: My wife has no religious denomination. Both of my parents are of the reformed Jewish faith.

12) Prior application for conscientious objector classification: No application was made to the Selective Service System for classification as a conscientious objector prior to entry into the Armed Forces.

13) Willingness to perform civilian work: If I am discharged as a conscientious objector I would be willing to perform work under the Selective Service civilian work program for conscientious objectors. I would consent to the issuance of an order for such work by a local Selective Service Board.

14) Description of beliefs:

It is my belief that man has evolved -- and continues to evolve -- toward a unique position and function on this planet and in this universe. This evolution is based upon natural laws which govern the workings and evolution of atomic, molecular, microscopic and cosmic processes; and it proceeds in accord with general principles of adaptive functioning operating over billions of years. I believe that man has preferentially emerged into his unique position and potential because we all possess a rare blending of biologic function and capacity that is the most advanced ir[illegible]tion ever achieved. The paramount embodiment [illegible]s uniqueness in man is our mental capacities and [illegible]rivative abilities to order, understand and m[illegible]pulate our immediate and far-distant environment. I believe that the underlying thrust of these ancient biologic forces is toward evolving a living system capable of consciously appreciating the underlying unity and beauty of the universe by continually probing its natural law.

I believe that among such living systems--of which man is the only representative known--there is is an ethical code which derives from this awareness of the remarkable biologic uniqueness we have been endowed with. In understanding that man has a unique functional capacity within the broad workings of a vast and largely inanimate universe, the inherent value of every human being is immediately apparent. In comprehending that our distinct endowment is the resulting vector of progressive evolutionary refinement over billions of years, our biologic momentum is grasped as a purposeful culmination which vastly magnifies the worth and value of every person. To promote man's individual and joint capacity to express his unique endowment is our innate goal because the probing of natural law and extension of knowledge is of benefit to us all. To retard or destroy our individual or combined functional integrity and protential capacities is completely wrong! It is a total abberation of the biologic value and momentum

which extends to and through us after eons of evolutionary time. Certainly the inherent violence and destruction of war between men is the most extreme violation of this basic moral directive and must always be opposed!

The physical and mental trauma of war is totally inconsistent with my beliefs and their manifestations in my role as a physician. As a clincial physician I have devoted myself to the principles of healing the sick, restoring function, alleviating discomfort and preventing illness wherever possible. As a medical researcher I have committed my efforts to experimentally and theoretically extending our scientific knowledge of natural biologic processes and principles. As a specialist in psychiatry I have focused my efforts at enhancing our mental capacities when they are distorted by disease. And these enhanced capacities can ultimately be used to appreciate the special evolutionary status we all occupy that uniquely relates us all as partners in a constructive and collaborative biologic journey.

Also as a psychiatrist I particularly have come to see that war and violence is not only morally wrong but also senseless and illogical. War never resolves any fundamental problems except demonstrating the relative military skills or other strengths of the countries involved. As wars become so quickly linked with "causes" and "issues," we forget that military violence resolves no issue other than relative destructive strength--and this has no inherent relationship to any issue other than strength. It is my belief that the "causes" could always have been satisfactorily resolved by better national skills and technique for understanding, defining and communicating about the actual problems that lead to the assumption of such military postures.

Further, war distorts and destroys the societal fabric of the countries involved. The need for an intact and evolving national (and international) fabric is increasingly crucial to man's individual and collaborative continuation of our biologically

defined momentum described earlier. Thus war is further a violation of these principles and again morally wrong. It is a crucial violation because the continued sustaining and development of our technological skills requires an increasingly great commitment of societal resources and priorities. And it is precisely by these technologies that our ability to probe and comprehend the depths and distances of our universe rests. Wars not only destroys the societal and institutional integrity of the parties involved; but directly diverts and destructively depletes the very sorts of societal resources whose existence and allocation is a precondition toward continuing our biologic momentum.

For all these reasons I cannot participate in or condone any war, or its supporting institutions that so debilitates man and his society. I do not believe that any professional act of mine were I to be on active Naval duty could be dissociated from a direct or indirect support of the United States Government Armed Forces. I must follow the dictates of a higher law of conscience and request discharge from a commitment, originally made over seven years ago, with which I find myself unable to comply in any capacity. This present request continues my efforts contained in my earlier letter of Sept. 18, 1973 in which I tendered my resignation and asked for dishcarge based on grounds of conscientiously objecting to all war in all forms (see attached letter of resignation).

15) Development of beliefs:

I am not sure if my early religious training has influenced the development of my beliefs. I have not been a member of any religious organization in many years and do not consider myself to be religious in any traditional sense. Yet the fact that I regularly attended Sunday School in a reform synagogue as a young child up until my early teenage years may have been influential nonetheless.

I do know, however, that the beginning of my

beliefs concerning man's special biologic endowment and momentum can be traced to the year prior to my entry into medical school. I was at that time completing my pre-medical and some advanced theoretical biology courses at Columbia University. Over those months I began studying and contemplating on my own a new theoretical approach to understanding general themes in biology concerning the nature of living systems. My original interest had been to understand man and why he makes the decisions he does. I was keenly aware of our rapidly escalating Vietnam War involvement and very upset by it; that is undoubtedly why the original question so absorbed me. However, my ideas and writings quickly led me to realize that if I were to be scientific I could not consider only man and had to study the more general case of how <u>any</u> biologic system makes a "decision". Over these months I invested many hundreds of hours of concentrated study and wrote over 400 pages of increasingly detailed theory. I also read many books and articles during this time in the natural and physical sciences. The most significant book was by a British physicist, David Bohm, entitled "Causality and Chance in Modern Physics." In that book the author magnificently shows that to advance our fundamental understandings of nature, we must be bold enough to disregard accepted theories and explain facts by new concepts that contain the older theories as a special and limited case of the newer ideas. His example of explaining quantum theory as a special instance of very different and more primary phenomenon was captivating, and encouraged me to search for more fundamental and unifying biologic themes that could finally shed light on my original questions. I was soon plunged into an exciting world of abstract theory in which examples were created, variables changed and lessons deduced as to fundamental problems all life had to solve in a changing world. Gradually there emerged an awareness that all the lessons were pointing toward only a few basic responses that were available to any theoretical

organism. And the plethora of life we know to exist emerged as a fantastic variation on only a few very broad evolutionary themes. Once these themes were appreciated it became possible to predict that an organism like man had to evolve as the expression of a potentially optimal solution to these more fundamental themes. The ramifications of this insight cast man into a new perspective of biologic value and purposeful momentum that was new for me; and many ethical implications such as in paragraph 14 were derived from this new view. Although countless unexpected questions were answered during these hours, the original one about the biologic processes of man's decision-making was only partly completed. This work and concepts have continued throughout my years of medical training and is compatible with all the biological data I have subsequently learned.

However, during my medical training these more abstract perceptions were increasingly anchored to the concrete realities of learning basic medicine, as well as living in a nation at war in Vietnam. For example, in the summer of 1967 I worked in the Brain Research Laboratory at my medical school on the biology of memory. The laboratory director was my supervisor and he was an early outspoken critic of our involvement who addressed many anti-war groups. However it was much more striking to realize that as I assisted him in delicate studies of the intact living brain there were countless living brains of soldiers and civilians being splattered and destroyed in Vietnam. Similarly I did research on ageing at the Rockefeller University during the next summer and a subsequent elective period of several months in 1969. During those months my focused interest in senescence and longevity was hard to reconcile with the continuing destruction in Vietnam that so particularly affected the youth of the countries involved. Our studies on ageing were published in 1969 and 1973 (see attached articles); the belated appearance of the 1973 article vividly recalled the stark contrasts just described when the work was actually done even though that war

was now officially over. Both of these research experiences also gave me a first-hand knowledge of the difficulty with which the workings of complex biologic processes are illuminated. And at the same time I was increasingly learning how difficult it often becomes to realize a physician's goal of undoing damage and restoring function. How fast a bullet or bomb could inflict damage that even the most intensive, protracted and expensive medical treatment could never fully correct. It was especially during my internship that the difficulty of reversing illness became clear. For the first time I had direct primary responsibility for my patients. Now it was my patient who died despite all our efforts; or my patient who was carefully restored to a more compensated approximation of health (and who relapsed all too frequently). This personal involvement and responsibility converted my medical teachings and perceptions as a student into a personal experience of conviction. And likewise my self-taught perspectives of man's evolutionary momentum were gradually being translated to a deeper level of conviction as personal involvement against the Vietnam War required my increased political responsibility.

From Spring 1968 through Fall 1969 my wife and I participated in numerous peaceful marches in Central Park and also at the United Nations. We signed petitions and collected signatures against the war. We joined Common Cause in 1971 which was a new political organization (a "citizen's lobby") founded by a former Cabinet Official (John Gardner) intent on ending the war and restoring our country's devitized institutions (see attached Common Cause statements); we wrote many letters to designated Congressmen to stop the war; and I recruited new Common Cause members from my friends. In the 1968 Presidential election I could not vote for Humphrey because of his frustrating refusal to clearly dissociate himself from Johnson's war policies; in 1972 I voted for McGovern due to the urgency of his anti-war commitment and the speed with which he felt military disengagement could

be accomplished. The progressive erosion of our societal integrity was wiltingly documented by persistent government distortion and suppression of the facts of the war (including perhaps the Gulf of Tonkin incident itself); by the rarely-reviewed governmental assumptions that got us into and kept us at war in Vietnam (revealed by the content and circumstances surrounding the 1971 publication of the Pentagon Papers); by the intense dissension between citizens for or against the war; and by increased government recourse to illegal domestic actions that undercuts the essential vitality of our country as a democracy (especially seen in the Ellsberg mistrial and entire Watergate Affair repercussions). Finally, the 1971 war atrocities conviction of Lt. Calley symbolized only further how irrational and dehumanizing war is to the very soldiers that are fighting it -- as well as the immoral, irreparable and needless damage to innocent people that war inevitably produces. The intense personal experiences of this Vietnam war deepened my convictions of how totally wrong and immoral this lengthy tragedy always was. And the intensity leaves me unable to believe that all these elements of societal disintegration and immoral destruction of fellow man do not accompany to some acceptable degree <u>any</u> and <u>all wars</u> no matter how apparently "noble" ("moral") they may superficially appear.

As I began my psychiatric residency I now focused on a different aspect of medicine; the treatment of the emotional, intellectual and behavioral manifestations of mental illness which is either primarily psychiatric or secondary to medical or surgical illness. Throughout this training there has been a persisting emphasis on distinguishing the rational from the irrational in patients as an important element in both diagnostic and treatment processes. I have seen these irrational forces clearly at work in the therapy of individuals, couples and families as well as groups of patients. I have treated individuals whose primary problems were due to an inability to control their violent behavior. Over the last 16 months I have worked almost every day in our methadone

clinic for drug addicts where the violence-prone life adjustments of my numerous patients has continually confronted me with the fact that violence never accomplishes anything constructive or even what's intended by these people. The treatment of such persons has emphatically shown me that violent behavior is always an abortive, emotionally primitive attempt at problem-solving and communication. In addition, a current psychologic theory of one of the major psychiatric disorders, schizophrenia, relates the cause to either an excessive amount of aggressive (potentially violent) drives, or an inability of the patient to deal with the normal amounts of aggressive impulses that arise within him. This training in distinguishing the irrational, trying to understand violence, and appreciating the disruptive effects of aggression has deepened my conviction that war among nations is not very different from the violence of individuals --except that on a national level the destructiveness is infinitely greater. Thus war cannot be condoned any more than violence be supported or encouraged in my patients. I have also seen and treated many cases of disturbed children where they have been severely affected by the impact of parental violence including the extreme instance of infanticide. A case I recently presented within our department well illustrated the devastating psychologic impact of violence on children (see attached copy of case). All of these clinical and training experiences have only extended and deepened my belief that violence on my level must be opposed because of its devastating physical and psychologic destructiveness which too often cannot be subsequently reversed.

Finally, especially during the last year of my psychiatric training, I had many occasions as a consultant on two wards (one for adults, the other for adolescents) to vividly appreciate the emotional repercussions of serious illness and dying on the patient and his or her close ones. One particular patient, a young woman dying of leukemia, required unusually frequent and intense psychiatric help as

her illness progressed over 4 months to her death. The degree of personal involvement she demanded and elicited from me was a profound experience. During my year as a medical intern all of the patients who died were of middle or advanced age; this woman was the first young dying patient I had ever treated. Her youth and hopes that would never be realized were so very moving as she tried to cope with dying. I presented her story after her death at a psychiatric symposium on death and dying--and the presentation is now submitted for publication (see attached copy of the presentation). From treating this woman in particular--as well as from later work with other dying patients (a number even younger than she)--I learned by painful personal experience a final repugnance for any unnecessary, man-made cause of death such as war implicitly involves. I cannot in good conscience participate in any war in any form, or the supporting institutions of war, for all of the foregoing reasons.

16) When and why the beliefs became incompatible with military service:

My views solidified in the late summer of 1973. This occurred due to the cumulative effects of many factors described above--with the particular coincidence of two events at this time. First, I received an unexpected certified letter from the Navy on August 8th from a Capt. Trone (B UMED--3174--mm; August 3, 1973) requiring me to submit a Berry Plan deferment request within 10 days or be called to immediate active service. I had no idea what "request" the Captain was talking about--and was shocked at the totally unexpected possibility of immediate active duty. I hurriedly wrote the Captain that very day to advise him that during all my residency years I had never been asked to submit <u>any</u> such request forms and to ask that he provide me with this form. However, the idea of active military duty now persisted in my thoughts for the very first time in the seven years since I had joined the Ensign 1915 pro-

gram.

Second, the Captain's letter came at a time just before my vacation which was an extremely difficult period for the young woman I was treating who was dying of leukemia (see pages 10-12 of the dying patient case presentation) and about whom I was quite concerned. During my vacation I received letters from her that revealed her terrible emotional and physical distress although she had just left the hospital. Even her handwriting had deteriorated. My concerns about her welfare, coupled with the sudden threat of being called to immediate active duty, gave me much to consider over that vacation regarding my views on actual military service and what course of action I should take. On September 18, 1973 I sent a letter of resignation from the U.S. Naval Reserve to the Commandant of the Third Naval District--and a copy of this letter to Captain Trone (see attached copy of the resignation letter). The reasons cited for tendering my resignation were those of conscientious objection to all war in all forms. I have considered myself a conscientious objector since that time.

17) Circumstances where force might conceivably be used:

As a general principle I do not believe in the use of force between people under any circumstances. The only situation in which I could envision it being sanctioned would be if I, or a loved one I was with, were personally attacked and where escape or avoidance of attack was not possible. In that instance I believe the self-protective use of force would be acceptable as warranted for bodily protection only. In general I do not believe that attack on personal inanimate property (e.g. theft) requires a violent response unless that attack also carries with it a clear and immediate additional threat to personal bodily safety which warrants a defensive use of force against the immediate danger.

18) How daily life and future actions have changed due to these beliefs:

Because my perceptions of our government as well as my views on war have changed, my attention and activities have shifted in new directions. I am much more alert to daily news of political events which bear on issues related to peace or war. I am much more ready to quickly challenge the assumptions of anyone, especially elected officials, who advocates war or the compromise of any of our democratic institutions. I directly express support or criticism to my elected representatives concerning views on significant issues such as our quality of leadership (e.g. impeachment of the President) or priorities of monetary appropriations (e.g. for health research and services versus armaments and military capacities; impoundment of appropriated funds, etc.). In general I participate much more actively in our political process, including the supporting of political candidates of high integrity who best incorporate my views against war. I will continue to do all of this as well as continue my membership in Common Cause.

In a broader sense there are other kinds of "violence" besides the military kind of destructiveness. There is, for example, the violence of poverty, of malnutrition and of racism which are destructive in different ways. I will monetarily and politically support programs, candidates and legislation aimed at ending these forces on both an international and, especially, domestic level. There is a great need to reorder our national priorities toward pressing domestic issues that have neglected for too long of funding and creative national leadership.

Finally, I feel that my practice of psychiatry (both professionally and personally) fully embodies and extends all the views previously enumerated (in paragraph 15) concerning war and violence. In addition I have a commitment to ongoing as well as future research projects to help shed more light on the basises of human behavior, including violence, so as to be able to better undertand and more scientifically treat psychiatric problems in all people. I will

also continue my clinical work, begun this last year, in treating the special psychiatric problems of geriatric patients by joining a newly-formed team of doctors at my hospital who volunteer their time to guide and teach the delivery of optimal care to this important age group; this continues my commitment to longevity and keeping the senescent years a clinically stable phase of life.

19) Best example showing the consistency and depth of these beliefs:

I feel that the singular best demonstration of my beliefs is the way my wife and I are raising our young son. He was born during a war and on the very day the headlines announced a disturbing enlargement of that war (i.e. our Cambodian invasion). As he grows and develops we have always tried to consistently guide him toward values and actions that channel his natural aggressiveness away from destructive expressions. We do not use physical punishment. We teach him that his temper tantrums can be ventilated verbally and physically--but the physical expression is to be directed at inanimate objects (e.g. his toys, a punching bag) and not his playmates or other people. We discourage his interest in toy weapons (e.g. guns) and ask others not to give him such gifts; but we let him have them if he insists or is given them along with our statement that such toys can hurt people when used by older people and we disapprove of this. We have always turned off television programs (even childrens' shows) when they become clearly violent. In these and many other ways we are doing the most important thing that demonstrates all my beliefs; we are teaching an evolving human being, our son, by our words and actions in a loving and permissive atmosphere that violence toward other people is wrong--and that his normal aggressive impulses can be channeled into non-destructive areas for appropriate expression as well as control. As he gradually becomes more able to understand abstract principles we will guide him

toward understanding that there are far better ways to solve problems than by any force or violence.

20) Previous military organization membership: None

21) Membership in religious organization: None

22) Participation in other organizations (non-military, non-political, non-labor): Since 1965 I have been a member of the American Association for the Advancement of Science. My relationship has been that of receiving their weekly journal, Science, and occasionally attending their annual convention where a multitude of scientific topics are discussed.

For the last year I have been a voting member of the American Psychiatric Association. I likewise receive their monthly journal and newsletter. Also I vote on referendums and issues concerning official positions and actions that will be taken and which are often viewed as official viewpoints of all of American psychiatry.

23) List of attached information (numbered as below) referred to in this application:

A) Papers published and/or presented:
   1) "Ageing and the regulation of cell activities ...."
   2) "Hematologic and ...electrolyte values of the ...mouse in maturity and senescence."
   3) Child Psychiatry Grand Rounds case presentation
   4) Dying patient case presentation

B) Official statements of organizations referred to (i.e. Common Cause):
   1) general statement of goals (including specifically ending the Vietnam War), philosophy and methods to be used
   2) "Questions and answers about Common Cause" including top specific priority on ending the Vietnam War (see page 3)
   3) "Common Cause report from Washington" newsletter including the sponsoring of an anti-Vietnam War

television program as well as specifics of the anti-war campaign centering on Congress

4) "Time to act" letter regarding upcoming Congressional vote on setting a December 1971 withdrawal date from Vietnam

C) Letter of resignation from the U.S. Naval Reserve (September 18, 1973)

D) Personal references: (to be forwarded)

1) RoseMarie Foster
2) Kenneth Gordon
3) Susan Gordon
4) Joel Markowitz
5) Paul Spring

EXHIBIT L-1 - LETTER OF ROSEMARIE A. FOSTER DATED APRIL, 1974

80 East End Ave.
New York, N.Y. 10028
April, 1974

To whom it may concern;

My husband and I have known each other for nine years. During our courtship and subsequent marriage I came to love and respect a man who possessed a deep moral conviction in his perception of mankind as a very special creature in our universe. Jeff's strong belief was that man, unlike other animals, was uniquely able to monitor and neutralize his primtive aggressive instincts. For my husband, war as the utmost expression of aggression between men, was thus an abhorrant, unnecessary activity which ran totally against the nature of his deep moral belief. During the subsequent years of our marriage I have seen this belief strengthen all the more and become a strong motivating force in many of our activities.

My husband's decision to specialize in Psychiatry after receipt of his M.D. in 1970 came from a specific desire to work with those mental diseases which rendered human beings inefficient in the control of their irrational and aggressive drives. The years before my husband's decision to enter Psychiatry were years of great turmoil in our society--the Vietnam war was raging and thousands of our own American citizens were losing their lives. We were sickened by the awful death toll! Jeff's moral contention that men indeed had the power to if he desired to control his primitive aggressions, reverberated over those years. We thus spent this time sincerely involved in anti-war efforts, continuously expressing our belief of the importance and value of human life and abhorrance for all war.

The summer of 1973 proved to be a crucial one for my husband. During this time Jeff was deeply involved in the psychotherapy of a 20 year old girl who was dying of leukemia--an experience which has further strengthened his respect for the human life. Also during this summer, my husband received a certified letter from the Navy in

reference to his deferment. This communication stated the possibility of immediate call to active duty if the matter of a particular deferment form was not settled (a form which my husband had never once received throughout his Psychiatric Residency). At this point my husband was faced with the imminent consideration of active duty in the Navy. In the quiet of the country home we had rented that summer, Jeff gave deep thought to actual personal involvement in the military--an institution which possesses the ultimate power to extinguish thousands of human lives. After much deliberation and long sessions of discussion with myself as well as close friends, my husband resolved that he just could not participate in any form with an organization whose main objectives are war activity and the killing of human life.

We have a 4 year old son. Our little boy's particular style of handling his anger and aggression is probably the most concrete example of my husband's beliefs. We have consistently taught Jamie that to feel anger or hostile feelings towards another human being is fine--but to physically act out his anger by hitting another person or deliberately destroying a valued object is totally unacceptable. Jeff is teaching our son to redirect his anger by verbalizing his angry feelings, by directing his anger towards his toys, encouraging him to use his punching bag or pound at his blocks. My husband is sharing his deep moral belief with his son--that physical harm and retaliation towards another human being is always wrong and never productive; one's feelings of anger can always be appropriately verbalized or redirected instead.

I have known and respected by husband for enough time to realize that his beliefs are deeply held. We have lived and agonized together over the long years of the Vietnam war, his years of medical training, the growth of his abhorrance for all war and the ultimate evolution of his beliefs into those of a conscientious objector. I do hope that the information which I have included above will be duly included in his application for status as a conscientious objector to war.

Sincerely,

s/RoseMarie A. Foster
RoseMarie A. Foster

EXHIBIT L-11 - LETTER OF KENNETH GORDON, ESQ. DATED APRIL 16, 1974

KENNETH GORDON
ATTORNEY AT LAW
THE GENERAL MOTORS BUILDING
767 FIFTH AVENUE
NEW YORK, NEW YORK 10022
PLAZA 8-7600

April 16, 1974

To Whom It May Concern:

Although I have known Dr. Jeffrey R. Foster for only two years, in that short time there has developed between us a warm and intense friendship. I believe that the intensity of that friendship can be traced directly to the special qualities exhibited by Dr. Foster: sincerity, loyalty, consistency, warmth, and genuineness. I was reminded, once again, of these qualities when I read Dr. Foster's statement of beliefs in support of his application for discharge from the U.S. Naval Reserve on grounds of conscientious objection. I would like to offer my reasons for supporting Dr. Foster's application and my firm conviction that Dr. Foster's beliefs are consistent and sincere.

Almost from the beginning of our friendship, I have been aware of Dr. Foster's seriousness of purpose in his professional practice. His intellectual dedication to psychiatry and, more importantly, his intense feeling for his patients have been obvious to me for some time. His acute concern for a young patient dying of leukemia was more than just grief for her fate; it was a wrenching sorrow and, perhaps, even anger and frustration at the impotence of medicine to save her life. I shared his thoughts all during that difficult summer as we jogged together each morning and later, after the girl's death, as we vacationed together in Dr. Foster's summer home. His feelings about death and the wasting of a young, unfulfilled life struck me quite forcefully. I found it then, as I do now, quite consistent with his beliefs as to the waste and horror of all forms of war.

At the same time that Dr. Foster's thoughts were occupied with the dying patient, he was faced with the dilemma of his prospective Navy service. His decision to

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ATTORNEY AT LAW
THE GENERAL MOTORS BUILDING
767 FIFTH AVENUE
NEW YORK, NEW YORK 10022

PLAZA 8-7800

resign from the Naval Reserve as a conscientious objecter was not, I can assure you, taken lightly and without reflection. Dr. Foster discussed his dilemma with my wife and I during the late summer of 1973 when we vacationed together with our families. The sincerity, depth and genuineness of his beliefs led us to conclude that his resignation was both logically consistent with beliefs and the only solution to his feelings of abhorrence of war. I feel that Dr. Foster was morally right and, indeed, bound to tender his resignation on grounds of conscientious objection.

As an attorney, I am constantly faced, professionally, by situations which call for the exercise of judgment as to the truth and consistency of opposing viewpoints. I believe that after seven years of law practice I can evaluate a client's position and judge whether a person is fundamentally honest in his beliefs. Dr. Foster is an honest man; his beliefs have not been manufactured or tailored to fit circumstances. He is as straightforward and consistent as any person I have ever met, and I can support his position unequivocally and unreservedly. I am fortunate, indeed, to have his friendship.

Very truly yours,

s/ Kenneth Gordon

EXHIBIT L-III - LETTER OF SUSAN GORDON DATED APRIL 12, 1974

[illegible] Avondale Road
White Plains, New York 10605

April 12, 1974

To whom it may concern:

Dr. Jeffrey Foster is an especially warm, honest and gentle human being. I am fortunate to call him my friend. I have known Dr. Foster and his family for the past two years, and it has been a most enriching experience.

As a teacher of high school English, I have met, both in literature and real life, many people whose integrity and morality have been questionable. While, on the surface, these people seemed to believe in noble causes, I soon realized there was no depth to these feelings and any real commitment -in terms of time or money- was avoided. This ignobility is a severe weakness in any one's character. My friend, Dr. Foster, has no hypocrisy in him. He is, above all else, an honest person.

I was not surprised to learn, last September, that Dr. Foster had filed a statement with the U. S. Naval Reserve, declaring himself to be a conscientious objector to all war in all forms. This seemed a logical step for him to take. In August, 1973, my family and I had visited for one week with the Fosters at their vacation home. Night after night, the conversation would shift from light, unimportant chatter to serious matters; racism in America; the uniqueness of each human life; the violence and aggression we see in today's world; the need to instill our children with morality and integrity. At this time, Dr. Foster was also quite occupied with thoughts of his young patient dying of leukemia. Empathy for her and her pitiable situation was with all of us but with Dr. Foster, a man dedicated to improving and preserving lives, it was especially apparent. Death was difficult to accept when all the medical attempts to stop it had been made. How could one ever condone it in war, when healthy people become the victims?

It is a pleasure to watch Dr. Foster with his young son, an energetic and refreshingly inquisitive child. His feelings, whether positive or negative, are never stifled. Anger

is an acceptable and occasionally laudable emotion in the Foster house. What matters is how this anger, and any other negative feelings, are evinced. Never does discipline turn to physical punishment. Rather, the child is taught to hurl words and fists at inanimate objects, such as his toys.

I have read Dr. Foster's letter stating his beliefs as a conscientious objector. Knowing him as well as I do, I find his letter to be an accurate presentation of his true feelings. I hope that the U. S. Naval Reserve will consider and respect his application.

Very truly yours,

Susan Gordon

SG:my

EXHIBIT L-iv - LETTER OF PAUL SPRING, M.D. DATED APRIL 9, 1974

216 Vesta Drive,
Toronto, Ontario.
M5P 2Z9.

Tuesday April 9, 1974.

Re: Jeff Foster
Application for Conscientious Objector

To Whom It May Concern,

This letter is to confirm that I have known Jeff Foster since July 1970 when I began my psychiatric specialty training at the Metropolitan Hospital in New York City.

Since that time, we have become close personal friends. In addition, our families know each other well. I have come to respect Jeff's integrity and his personal and professional conduct has been of the highest caliber.

I have been privileged to share with Jeff some of his deepening concerns over the profound moral questions of war and one's participation in such an activity. I feel Jeff's objection's to taking part in war are sincere beliefs which are honestly and deeply held.

Yours sincerely,

s/ Paul Spring, M.D.
Paul Spring, M.D.

EXHIBIT L-v - LETTER OF DR. JOEL MARKOWITZ DATED APRIL 27, 1974

JOEL MARKOWITZ, M. D.
40 EAST 83RD STREET
NEW YORK 28, N. Y.
BUTTERFIELD 8-0880

April 27, 1974

Commandant, Third Naval District
Flushing and Washington Avenues
Brooklyn, N.Y. 11251

re: Dr. Jeffrey Foster

Dear Sir:

I have been Dr. Foster's psychiatrist for some time, including the period from the beginning of his medical education to the present.

From the time I first knew him, he abhorred violence and aggression. He has always demonstrated a blanket negative response to war, crime and other destructive activities.

Over the past several years his beliefs have strengthened in this direction, particularly as he discussed the horrors of the war in Vietnam. His investment in becoming a doctor, in helping and healing people correspondingly increased.

I would say that his anti-war attitudes crystallized in the summer of 1973 and I would definitely consider them consistent with the classification of Conscientious Objector.

Dr. Foster showed me the copies he had received of reports by Chaplain A. Otto and by Dr. Thomasson concerning their interviews with him. Concerning the former, I simply disagree: Dr. Foster's attitudes are most sincere. Perhaps this was difficult to determine on a single interview.

Concerning Dr. Thomasson's letter, while I cannot now discuss specifically his diagnostic conclusions, I am certain that he is aware that deeply felt moral and ethical convictions always have psychodynamic roots. That they are never arbitrarily- or even intellectually derived.

I would guess that the vast majority of sincere Conscientious Objectors have some difficulties in dealing with anger and aggression.

Yours truly,

Joel Markowitz M.D.

L - V

REASON FOR REQUEST (Complaints and findings)	IND PS	CREST	22 Apr 74

EXHIBIT M - STATEMENT OF NAVAL PSYCHIATRIST

PROVISIONAL DIAGNOSIS

DOCTOR'S SIGNATURE	APPROVED	PLACE OF CONSULTATION	☐ EMERGENCY
		☐ BEDSIDE ☐ ON CALL	☐ ROUTINE

CONSULTATION REPORT

This is a 31 yo, married, Jewish, Physician, who is applying for status as a Conscientious objector. FOSTER attended Northwestern University for a period of four years where he received his undergraduate degree. At the time he was thinking of law, however, after his junior year, he spoke to members of that profession, k.e. Lawyers and Judges, who appeared to be disenchanted with their work and stated that they would not choose the profession having it all to do over again. FOSTER himself was becomming disenchanted with the man mad legal aspects of law and was more interested in biology, related sciences, and illness. He attended Columbia University for two years with the idea of going into medicine. He was in independent research and taking a theoretical course in biology. At that time, he became interested in biological evolution, the affects on man and his adaptive mechanisms. During his medical school and internship training at New York Medical College, he rejected the emphasis on various parts and organs and began to view the person in a holistic sense. These attitudes he feels led him into the field of psychiatry and he did his residency training at Mt. Sinai Hospital. During his psychiatric training, he feels that he was daily confronted with violent prone people who were homicidal and/or suicidal, and whose actions did not resolve any issues. He turned to the obvious conclusion that every man is faced with death from natural causes and that the world would be a nicer place to live in without the insanity of man made death and destruction. However, it was not until the summer of 1973 when he began to receive communications regarding his obligated military service tht he began to seek ego-syntonic ideals and means for avoiding that obligation. In spite of his psychiatric training, throughout his application and in the interview, FOSTER addresses himself only to intellectualize, universal concepts which he interprets to mean that he should not be asked to fullfill his obligation as a military medical officer.

(Continued on reverse side)

SIGNATURE AND TITLE	DATE	IDENTIFICATION NO.	ORGANIZATION
D. L. THOMASSEN LCDR MC USNR	22 Apr 74		

PATIENT'S IDENTIFICATION (Use typed or written entries: first Name—last, first, middle; Grade; date, hospital or medical facility)

FOSTER, J. R.
070 34 4047

REGISTER NO.	WARD NO.

CONSULTATION SHEET
Standard Form 513
513-104-02

ENCL (2)

(2)

TO:	FROM: (Requesting ward, unit, or activity)	DATE OF REQUEST
COMMANDING OFFICER	3ND PSYCHIATRIST	22 Apr 74

REASON FOR REQUEST (Complaints and findings)

PROVISIONAL DIAGNOSIS

DOCTOR'S SIGNATURE	APPROVED	PLACE OF CONSULTATION	☐ EMERGENCY
		☐ BEDSIDE ☐ ON CALL	☐ ROUTINE

CONSULTATION REPORT

On mental status, this is a 31 yo male, who is in good contact. The affect is bland and the speech is measured and guarded. The subject of superior intelligence and his thinking is highly intellectualized so that he is only superficially in touch with his true feelings. This makes for a certain amount of frigitity which is an adaptive mechanism necessary for maintaining control due to the unconscious fears of the possibilityof losing control and/or being controlled. As a physician, one is called upon to administer unto those that are hurting, not to set up arbitrary, self serving principals that would allow for avoidance of the conflicts of personal hangups to the exclusion of medical care for large segments of population in spite of their occupations. The subject has taken his unconscious feelings of aggression, resentment, need xxx for control and personal ambition and elevated them to the status of moral and ethical principals. There is no evidence of psychosis, neurosis, or depression.

DIAGNOSIS: 1. Obsessive compulsive personality pattern traits. 2. Applicant for Conscientious Objector Status.

(Continued on reverse side)

SIGNATURE AND TITLE	DATE	IDENTIFICATION NO.	ORGANIZATION
[illegible]	22 Apr 74		

PATIENT'S IDENTIFICATION (For typed or written entries give name—last, first, middle; grade; date; hospital or medical facility)

REGISTRAR NO.	WARD NO.

FOSTER, J. R.
070 34 4047

CONSULTATION SHEET
Standard Form 513
513-104-02

EXHIBIT N - STATEMENT OF NAVAL CHAPLAIN

8 APRIL 1974

FROM: CHAPLAIN, NAVAL SUPPORT ACTIVITY BROOKLYN, NEW YORK
TO: CHIEF OF NAVAL PERSONNEL

SUBJ: CHAPLAIN'S INTERVIEW IN THE APPLICATION OF LT. JEFFREY R. FOSTER, MC, USNR-R, 078-34-4047, FOR CONSCIENTIOUS OBJECTOR DISCHARGE.

REF: (A) BUPERSMAN 1860120.6

THIS LETTER IS TO STATE THAT I INTERVIEWED THE ABOVE NAMED NAVAL OFFICER CONCERNING HIS STATUS AS A CONSCIENTIOUS OBJECTOR.

IN MY OPINION DOCTOR FOSTER IS WEAKLY SINCERE IN HIS CONVICTIONS THAT HE CAN NEVER PARTICIPATE IN ANY ACT OF WAR.

IT IS MY FURTHER OPINION THAT DOCTOR FOSTER'S CLAIM OF CONSCIENTIOUS OBJECTION IS BASED UPON A RARE PERSONAL MORAL CODE, WHICH EVEN HE HAS GREAT TROUBLE IN DEFINING.

A. J. OTTO
COMMANDER, CHC, USN

ENCL (1)

EXHIBIT O - SUMMARY OF INTERVIEWS WITH NAVAL PSYCHIATRIST AND CHAPLAIN DATED APRIL 5, 1974

Jeffrey R. Foster April 5, 1974

SUMMARY OF INTERVIEWS WITH PSYCHIATRIST AND CHAPLAIN ON APRIL 5, 1974 AT NAVAL SUPPORT ACTIVITY, 136 FLUSHING AVENUE, BROOKLYN, NEW YORK 11251

1) Interview with psychiatrist, Dr. Tomlinson(?) lasting 1½ hours:

The initial phase of the interview concerned three main questions. First, I was asked how I had come to decide upon medicine as a career. I reviewed my desire to help people which originally lead to an interest in studying law; I recalled my multiple interviews in Summer 1963 with numerous successful lawyers who frequently referred spontaneously to their stomach ulcers--and with surprising uniformity expressed reservations if they would be willing to pursue a legal career again even though they were quite successful. I mentioned my consequent re-evaluation of a legal career for myself and my growing interest in a medical career with its concerns emanating from the less arbitrary laws of biology and related sciences providing I could enjoy studying them--which is what did occur.

Second, I was asked how I had come to decide on psychiatry as a medical specialty. I reviewed certain early experiences in my medical school training where the entire emphasis on the diseased organ being treated totally ignored the patients' concerns about bodily changes they were experiencing (e.g. sudden painless accumulation of abdominal fluid causing dramatic and terrifying enlargement of the abdomen). Similar later experiences were related with my growing dissatisfaction at considering organs and disease states instead of the entire human being as important factors in my choice of becoming a psychiatrist.

Third, I was asked how my views against war and violence had developed. I inquired if the doctor had read my application form where I had discussed this question so that I might fill in any area that did not seem clear--or at least orient myself to know where to begin my answer to his question. The doctor indicated he had only briefly glanced at my application form--and so I reviewed the nature and development of my beliefs essentially as presented in the application form.

The next and longest phase of the interview concerned a related series of questions and assertions put to me concerning why the needs of servicemen for medical treatment and restoration to health were in any way different from the same needs of civilian patients I would treat. I was asked if servicemen did not have the same needs and rights to medical treatment as civilians do. I answered that I in no way disputed the rights of servicemen to receive the very finest medical care--but that I could not personally provide this care as it would be violating my stated ethical precepts; I explained how such treatment by myself would be sanctioning the military system and returning a serviceman to it for actual or potential use in violent combat-related activities. The doctor responded that this was not necessarily so and that "it's not your responsibility what they do" after being treated. He then gave the example of "just patching up a homicidal patient and hoping he won't do it again." I strongly differed with his "patching up...and hope" approach to this sort of dangerous patient and mentioned that I would not rely on "hope" but make every effort to prevent future repetitions by employing all available psychiatric and neurologic modalities to try to diagnostically understand and actively treat such a patient. Again the concept of responsibility was brought up by the doctor with his remarking that he "cared" about his patients and often recalled

former patients from even several years in the past with the hope that he had helped them--however he distinguished this "caring" from a sense of "responsibility" for their subsequent actions. I respectfully suggested that we were perhaps getting into semantic difficulties and that since he preferred the term "caring" in regard to patients I would use his term with the feeling that we would probably facilitate understanding each other more easily. He mentioned that there were many criminals and sociopathic persons whose behavior could not be changed. I agreed that this was often--but by no means always--true. I related my almost daily contact with many such patients I treat in our methadone maintenance clinic for drug addicts where I have worked for about the last 1½ years. I explained how I "care" very much about the violent propensities of many of these patients and work very actively to help them find better non-violent ways to cope; I have had moderate success with some of these patients--and my caring about their present and future potential violence is a realistic concern in that it cannot condoned and cannot be ignored. I said how I also could not ignore the fact that the primary function of a military physician is to return his patient wherever possible to a state of combat-related readiness for war and violence which I believe to be morally wrong and could not do. We briefly discussed his previous disagreement with this view of the function of a military physician. I explained that although I had not read any Naval literature on this subject I had read excerpts from the Army Field Manual where these views were unequivocally expressed and I assumed this would apply to Naval physicians as well. Since my assumption may have been in error, I asked the doctor to please correct me if I was wrong. He offered no comment.

The final phase of the interview again centered around three main questions. First I was asked if war was not an unpleasant but natural fact that certain countries got involved in much more regularly than others. I answered that I did not believe war to be a "natural" state because there were countries that did not involve themselves in wars. I also commented that for those nations that do go frequently to war there are better nonviolent ways to resolve their problems. The answer was cut short by the next question. I was asked how did I know that biologic evolution was against war and that maybe war was necessary and good. I initially referred to the enormous, immoral, destructive diversion of war from man's biologic momentum--and I was about to more fully relate the relevant beliefs stated in my application when a new and final topic was suddenly introduced.

This last issue was phrased as a comment or observation--and yet the period of watchful silence that followed the statement seemed to imply that a response was in fact expected. The doctor said that he was surprised that I, as a psychiatrist, had not mentioned "unconscious factors--in yourself--about earlier reactions to aggression, etc., that have resulted in your views and attitudes." He then commented that I did not have to comment on this "and you're entitled to your beliefs." I nodded my understanding of his last comment and mentioned that I thought I had described how my beliefs had developed earlier in the interview. After a period of increasingly awkward silence which left us both simply staring at one another, I decided to address his topic of "unconscious factors." I mentioned it was perhaps coincidental that I had just completed a literature review on the important psychiatric topic of insight that I would be presenting to the psychiatric staff at my hospital in a few weeks. While there is no question that unconscious fantasies, forgotten childhood experiences, etc. both exist and are powerful factors especially in basic personality development and early values and attitudes--their later value in contributing to

efficacious therapeutic change or any subsequent other attitude change is quite a different matter as shown in this literature review. In fact there are several important new therapies where unconscious factors are not "uncovered" although many behavioral, symptomatic and attitudinal changes may strikingly occur. The doctor's initial response to this was that he wouldn't want to nonetheless minimize what the psychoanalysts have contributed to our knowledge. I completely agreed with him--but noted that these new modes of therapy are generating data and theories that are disturbing and challenging except that analysts are not really looking at these facts. The doctor agreed and stated that while he feels unconscious factors are very important, he also agrees that their role in producing therapeutic changes is indeed open to question.

The interview appeared to terminate on an amicable note. When I asked the doctor how to locate the Chaplain for my next appointment he was helpful and spontaneously noted that the Chaplain was an "odd fellow" without any further elaboration being offered or solicited.

2) Interview with chaplain, Chaplain Otto, lasting 1 hour:

This next interview substantively began with my being asked to describe the nature of my beliefs. I referred to my early religious training and then summarized my beliefs essentially as described in my application which the Chaplain seemed to have already read. He then asked me "What do you know about World War II?" I asked him to clarify what aspect of that war he was inquiring about and he said "Do you know how many people were killed in it?" I indicated I wasn't sure of the exact figures, he pressed me to give him my best guess (which was too low), and then emphatically cited the actual figure as being "50 million-and mostly innocent civilians and children." I said how very horrible that was and he strongly concurred.

He then asked me "Isn't medicine violent?" I again had to ask him to clarify his question and he asked if it wasn't violent to surgically cut into somebody or amputate a limb even though it was for the purpose of saving the person's life. However this question proved to be rhetorical in that he never gave me any opportunity to respond and began an approximately 50 minute discourse concerning his views on the causes of war and the value of the military to which I had little choice but to politely listen. He began by presenting the analogy that just as medicine was violent so to was war. He repetitively stressed by numerous examples that the basic reason for war was "to decrease the overpopulation problem" and that this was a decision made by politicians to deal with this problem. He noted that we have better means of population control and food production these days but this is only a recent development. He returned to the case of World War II saying that whether or not the United States ever entered the war it would have probably stopped anyway at the point where 50 million people were killed--and referred to the serious overpopulation problem of central Europe at that time because our country and others had refused to accept immigrants. He gave further examples such as the present fighting in Northern Ireland was primarily due to overpopulation (although there was "a slight religious problem also"), and that the recent change of government in Chile in which "80,000 people died" was mainly also to reduce the overpopulation problem; there was a further example of a war in Africa he had read in a recent clerical journal in which "200,000 died" to decrease the overpopulation problem and that this latter war had never even been reported in any of our newspapers. He referred to our 45,000 dead in Vietnam saying that "that really wasn't so very bad--only about 4,000 a year" and noted that of that total "you'd find bullets in only 4,000 of them--and the rest were run over by jeeps and similar accidents."

He then presented his views that the military was valuable "to gain skills and nature" in a way otherwise not available to them and that such technical skills were often of great subsequent value to them in civilian life. He stated that he wanted me to think of the military as being valuable and useful to the individuals serving in it.

He then changed his topic to my application saying that I was making a serious decision and "we could use you--but most psychiatrists are just paper-signers for discharging their patients and not really treating them." He continued that "if you want the C.O. it well probably go through--there's no war now--and most court cases go for the C.O. applicant." He then mentioned that he himself came from "a big family of C.O.'s" and mentioned a brother saying that his application had been on a religious basis.

Throughout his lengthy discourse I mainly listened and at the end said that in view of my purpose for being here it might be appropriate for me to comment on some of the interesting views he had expressed. He agreed and I made the following brief comments on his statements. I noted that I could not agree with the analogy he had used concerning the similarity between "medical violence" and the violence of war; I mentioned that even surgical intervention was done in order to save the life and health of a patient who had given his consent for the operation--and this was quite different from military destruction of life such as the 50 million deaths he cited in World War II with his own emphasis on the fact that these were "mostly innocent civilians and children" who obviously did not consent to their own extinction. I referred to his thesis that war was primarily to solve overpopulation problems and said that I was horrified by such a "solution," that it was totally wrong, and that no politician or any person has the right to make such a decision to purposely kill others.

I next addressed myself to his views that the military was valuable to its soldiers, particularly the younger ones. I asked him to correct me if I was wrong in my understanding that the technical skills were taught specifically for military purposes of combat-related capacities to fight wars. He agreed this was true. I said that while it was useful that some soldiers' military skills might have civilian value, I was opposed to war and could not ignore the fact that many other young soldiers returned damaged or dead. He agreed this was so. Finally, I assured the chaplain that I was aware my application reflected a serious decision, that I had given it a great deal of consideration, and was quite certain that I wished for it to be processed. The tone of the entire hour was cordial and it ended on an amicable note with his offering me helpful and detailed directions on a faster way to return to Manhattan that I had not known.

070-34-4047/2105
PERS-44158
24 APR 1974

BUPERS ORDER 086829

LT JEFFREY R. FOSTER, MC, USNR
80 EAST END AVENUE, APT 12J, NEW YORK CITY, NY 10028
VIA: COMTHREE

WITHIN SEVEN DAYS AFTER RECEIPT THESE ORDERS PROCEED AND REPORT MEDICAL OFFICER DESIGNATED IN FIRST ENDORSEMENT FOR PHYSICAL EXAMINATION, INCLUDING FLIGHT PHYSICAL IF BEING ORDERED TO DIFOT. IF FOUND NOT PHYSICALLY QUALIFIED IMMEDIATELY RETURN ABOVE ADDRESS, ARRIVAL CONSIDER RELEASED FROM TEMPORARY ACTIVE DUTY. EXAMINING MEDICAL OFFICER COMPLY ITEM 85. IF FOUND PHYSICALLY QUALIFIED IMMEDIATELY RETURN ABOVE ADDRESS, ARRIVAL CONSIDER RELEASED FROM ACTIVE DUTY UNTIL SUCH TIME AS NECESSARY TO COMMENCE TRAVEL ON OR AFTER 1 JUL AND PROCEED AND REPORT CO, NAVAL SCHOOL OF HEALTH CARE ADMINISTRATION, NATIONAL NAVAL MEDICAL CENTER, BETHESDA, MD, (30640), NOT LATER THAN 1600 15 JUL AND NOT EARLIER THAN 14JUL74, TEMPORARY ACTIVE DUTY UNDER INSTRUCTION ABOUT TWO WEEKS INDOCTRINATION. COMPTEMDIRDET ON OR ABOUT 29 JUL 74 PROCEED AND REPORT CO, NAVDRGREHCEN, JACKSONVILLE, FL, (67555) DUTY.

ACCTG DATA: N2G5 1751453.2250 T 000022 AE 2G5/1/X/T 2G5070344047

IN COMPLYING WITH THESE ORDERS REFER TO REVERSE SIDE FOR EXPLANATION OF ITEMS LISTED BELOW.
LIST III- ITEM 2; 24; 55; 83; 83A; 85; 94; 96

David H. Bagley Jr.

DAVID H. BAGLEY
VICE ADMIRAL, USN
CHIEF OF NAVAL PERSONNEL

COPY TO:
COMTHREE FOR NAVRES UNIT CO
NAVRESMANPOWERCEN BAINBRIDGE MD (RR)(2)
CO NAVDRGREHCEN JACKSONVILLE (P-3)
BUMED (3A12)
NAVSCOLHELCAREADMIN NATNAVMEDCEN BETHESDA MD BUMED 3174

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ONLY COPY AVAILABLE

EXHIBIT Q - DEPOSITIONS OF DRS. JOEL MARKOWITZ AND JEFFREY FOSTER TAKEN PURSUANT TO ORDER OF THE COMMANDANT, THIRD NAVAL DISTRICT

MEDICAL CORPS

U. S. NAVAL RESERVE

- x

In the Matter of the Application for Discharge of :

DR. JEFFREY FOSTER :

- x

Depositions of Drs. Joel Markowitz and Jeffrey Foster, taken pursuant to Order of the Commandant, Third Naval District, dated May 3, 1974, held at 140 West 62nd Street, New York, New York, on May 31, 1974, at 11:15 a.m., before Comdr. J. C. Sweeney, O-3 Officer.

APPEARANCE:

MESSRS. RABINOWITZ, BOUDIN & STANDARD,
Attorneys for Applicant,
30 East 42nd Street,
New York, N.Y. 10017,
By: MICHAEL B. STANDARD, ESQ.,
of Counsel.

- - -

PROCEEDINGS

COMDR. SWEENEY: We are beginning a hearing in the application of Lt. Jeffrey Foster, Medical Corps, U. S. Naval Reserve, for discharge by reason of Conscientious objection, this 31 May, 11:10.

I am acting pursuant to appointing order of the Commandant, Third Naval District, dated 3 May 1974, which will be part of the record.

The proceedings will be conducted in accordance with the Bureau of Naval Personnel Note 1900 of 8 October 1971. These are sections in the Bureau of Naval Personnel Manual 1860120.

I have previously reviewed the file in the case of Dr. Foster with the exception of the technical papers presented. Other than the A-4 paper, dying-patient presentation, A-4.

MR. STANDARD: I am sure this is academic. But may I inquire if you are in the direct chain of command?

COMDR. SWEENEY: No, I am not in the direct chain of command of Lt. Foster. I am the commanding officer of Naval Reserve Law Company 3-6 and the members of the Naval Reserve Law Company have been at various times requested to serve as hearing officers in similar type cases.

I think we can begin with Dr. Markowitz.

You can come with me, Dr. Foster.

(Dr. Foster leaves the hearing room.)

- - -

D R J O E L M A R K O W I T Z , residing at 40 East 83rd Street, New York, New York, was called as a witness and, being first duly sworn, testified as follows:

COMDR. SWEENEY: Dr. Foster has requested that we take the testimony of his personal psychiatrist, Dr. Joel Markowitz, and that will now be done.

DIRECT EXAMINATION

BY MR. STANDARD:

Q Dr. Markowitz, you have given your name and address to the reporter. Would you indicate to Comdr. Sweeney how long you have known the applicant, Jeffrey Foster?

A Fourteen years.

Q Would you indicate the circumstances under which you have known him?

A Well, he came to me in his last year of high school because of difficulties in coping with his family, his school. And this is what I will testify to, this is what I will talk about, if I may go ahead.

Q No, I wish you would just hold it a second and let me ask a couple of preliminary questions.

A I see.

Q Do you know Dr. Foster in a social circumstance?

A No, there is never any social contact.

Q Would you tell us by way of your own background where you went to medical school and what in general your curriculum vitae are?

A I went to Columbia P&S. Afterwards I interned at Montefiore Hospital. I had two years of residency at Hillside Hospital in Glen Oaks and one year in child psychiatry at Pleasantville Cottage School.

Q How long have you been a psychiatrist?

A I have been a psychiatrist for twenty years.

Q I wonder if you would proceed giving your relationship with the applicant and describe to the best of your ability the nature of Dr. Foster's objection to participate in war in any form?

A Well, Dr. Foster's coming to me 14 years ago is related to his claims to be a conscientious objector. It is difficult to -- I had a feeling it would be difficult for me to prove that he was but I do have a considerable amount of evidence, I think, in my 14 years of dealing with him.

Dr. Foster's father is perhaps the most aggressive parent I have ever dealt with in my career. He is a man who has always taken a pride in his uncontrollable violence.

One of the favorite family stories, of which I was told immediately when Dr. Foster came to me, was that -- which the father tells proudly to the children and to everyone else -- when he was a young man working in a company, at a meeting he lost control of his rage and grabbed someone around the throat and almost strangled him, and because he was so concerned with the danger of his aggression he decided to go into business for himself and never work for anyone else -- which he did.

He has always terrorized his three children this way. I have known all three of them and they all talk about not knowing whether they would be killed by him.

I have known other young men who were brought up by brutal fathers and often they had nervous breakdowns, often they had psychotic episodes. Sometimes if they are stronger than that they would withdraw from life or project upon society the role of father and rebel against it, becoming delinquent, vandals, criminals.

I know one fanatic young communist projecting on society the role of father wants nothing more than the destruction of this country.

Perhaps there is only one non-psychiatric constructive way to deal with this problem and that's the course that Dr. Foster took, and I believe that the great majority of conscientious objectors take. He divided reality into two categories: one, a violent evil category, which is, of course, his father's, and the other a non-violent, good category, to which he decided to dedicate his life -- which is the reason also for his medical school, his psychiatry.

When he came to me he was having difficulty coping because of his very high level of anxiety -- which he still has a certain amount of, and it was psychiatrically indicated not to interfere too much with his splitting reality into these two categories because his entire adjustment was based on it. There are certain things psychiatrists leave alone and this was one of the things that had to be left alone for many years.

Now, I think that Dr. Foster got into trouble in his application as a conscientious objector partly because when he first heard that he had to go into the Navy he used a device which is familiar to psychiatrists

called denial. I remember he came to my office at that time and simply mentioned to me that there was no problem, he was supposed to go in the Navy but there was some alternative, and I don't think he ever considered himself in the Navy from this time on and I never heard of it from that time on until this very time. He just pushed it out of his mind.

I think another reason he got into trouble was on his interviews with Dr. Thomason and Comdr. Otto, the chaplain, he presented his views on non-violence in a very intellectual way, in a very intellectualized way, perhaps.

I can imagine a young man of simple background or of a religious background coming in and saying simply, "I am morally and ethically opposed to war" and being accepted as a conscientious objector just on this basis.

Dr. Foster -- let me interrupt. When Dr. Foster came to me 14 years ago he did present his beliefs in those terms. He spoke of war, violence, aggression being bad, evil. He spoke in moral and ethical terms. Since that time, of course, we have at times discussed the basis, the psychodynamic connections of his personality patterns with his moral/ethical beliefs, and I think

he stretched these moral/ethical beliefs too much during the interviews.

And so Comdr. Otto said that he had some vague personal code which he had difficulty articulating. Dr. Thomason said that he was elevating his emotional problems to a moral and ethical set of standards, I think.

Now, Dr. Foster doesn't have trouble articulating his moral/ethical beliefs. Many years ago he wrote some 400-odd page thesis on his moral/ethical beliefs and in this thesis he said essentially that man is an ultimate distillate of evolution and man should be beyond the aggressive categories of more primitive creatures. Man should transcend the wars and criminal activity that is a kind of human aberation. That was his emphasis to me and he tried to prove it by tracing the evolution of man.

He did this in a very articulate and interesting way. This was before this time. This was many years ago. I don't think he could do this in a short interview and he maybe had difficulty in presenting his beliefs therefore.

I think he will testify or has testified to his interview with Comdr. Otto. Comdr. Otto concluded that

he was weakly sincere as a conscientious objector. I don't think Comdr. Otto heard much of Dr. Foster's beliefs, because according to Dr. Foster right after asking a few questions and Dr. Foster made brief answers, Comdr. Otto went into his own beliefs that war is a necessary phenomenon to reduce the surplus population, and he held forth at great length.

Dr. Foster was somewhat shocked and horrified by this and suggested that there might be better ways to keep down the surplus population. But that was the totality of the interview as far as Dr. Foster presents it.

As far as Dr. Thomason's interview with him, I think the great majority of psychiatrists would agree with me in saying that any sincere moral belief has all kinds of psychodynamic connections, that there are, let's say problems involved in the more atypical beliefs, whether it be being a conscientious objector or being a vegetarian or any of the more extreme points of view that people sincerely deeply believe in.

Any gut reaction has to have deep personal reference. One can't really say "I have a soncere, a moral/ethical belief that five and five make ten." That is something we know to be true but we don't care that

much.

I am not trying to reduce moral/ethical beliefs to psychodynamic problems. That's like trying to reduce the Ninth Symphony to Beethoven's emotional problems. It is the kind of thing that perhaps young psychology students are prone to do.

Man has a remarkable ability to sublimate complexity and can transcend his problems with his complex sublimations, with these wonderful creative products and constructs. That man has come to the highest level of human functioning represents the transcending of these problems with moral/ethical beliefs and great cultural constructs.

But I am saying I am sure the vast majority of psychodynamically oriented psychiatrists would say that there is always a connection between moral and ethical beliefs and certain psychodynamic patterns. And Dr. Foster has very similar patterns to those of conscientious objectors. I am certain that all conscientious objectors have some atypical attitude toward aggression, that they would handle aggression in a somewhat less adequate way than the average person, that they would have difficulty in defining, perhaps, themselves and their families and certainly their countries, that

they would have more difficulty in dealing with military situations than the average person would have.

Now, frankly I am here -- I am not a conscientious objector. I enlisted in World War II. I am in favor of a militarily strong America. When my oldest son received his draft number during the Viet Namese War he would certainly have gone into the service with no effort on my part or his to prevent his going in had the war lasted any longer.

It is part of an indication of the strength of Dr. Foster's beliefs that in 14 years of psychotherapy this hasn't in any way rubbed off on him. He hasn't in any way modified his non-violent attitudes.

I am concerned about Dr. Foster, frankly, because he has done so well. He has become one of the most conscientious doctors and psychiatrists I have come across. He is one of the hardest working people. He is a saint to his patients. He is a sensitive, understanding, sympathetic father and husband. And given some leeway in choosing his area of functioning he will become a very valuable contributing member to society. I would guess he would spend his life doing constructive non-violent things, helping people.

In the wrong kind of setting I would be concerned

about his functioning, his psychic stability, his being able to be a useful citizen, but even coming out of it without some damage.

If he is faced with going to jail, losing his medical license, which he seems to be conditioning himself for, because he is so concerned about it, he can't give up his moral/ethical beliefs, in other words. He lives by them, they are the foundation of his functioning. He will need years more of psychotherapy before he can even deal with what I consider adequacy with his patients' aggressive problems.

He has made up his mind he cannot go into the service and so he is thinking of this other possibility, that he might get jail. I don't know that he would survive jail very well -- or at all. And it would be a terrible loss to his family and, of course, to society too. It would be a kind of irony if this young man, who has done so well and who is so opposed to destructiveness, were put into the Navy, which would, I think, then represent in his mind a very aggressive father surrogate, into a dilemma of having to decide between abandoning his moral/ethical way of life and going to jail -- which I don't think he is constitutionally psychiatrically capable of dealing with.

That's why I came down here to testify. I have never before testified to keep someone out of the service. I can think of nothing else to say.

CROSS EXAMINATION

BY COMDR. SWEENEY:

Q Doctor, you mentioned that Dr. Foster has similar patterns to a conscientious objector. Have you previously interviewed conscientious objectors? Have you had to apply the standards for conscientious objector discharge before?

A I have never done that. But I have dealt with many patients who have had non-violent types of philosophies. I have read about, of course, many psychiatric papers on people with non-violent personalities. I can't think of specific conscientious objectors I have read about. I am not sure any of them were conscientious objectors.

But I can see easily how these people could under these circumstances be conscientious objectors.

Q Doctor, in the 14 years that Dr. Foster has been your patient you have mentioned that he had moral and ethical beliefs against violence in 1960. What I am concerned with are the moral and ethical beliefs that he has subscribed to after September 1973. These are in

his letter request -- perhaps I should let you see that. And I am anxious to determine whether the statements made of beliefs after September 1973 are consistent with feelings that you have noted since you began to treat him in 1960 (handing paper to witness).

MR. STANDARD: For the record, the Commander is referring to what is the application for discharge on the grounds of conscientious objection, page 2.

A Now, these beliefs are beliefs that are consistent with patterns he has always had.

I have the feeling that what's happened with Dr. Foster -- he is speaking here about aggression and war -- is that -- I think he has never -- in his prior discussions with me he had spoken of man as a different animal than that of other higher mammals -- than other higher mammals, I'm sorry. And always in his prior discussions he has mentioned that the idea of destruction, the idea of killing, the idea of violence, is a terrible thing in man. This has always been his stand.

Q Did you observe a change in quality or quantity of the nature of this belief between 1960 and September 1973?

A I would say that since he has -- I have for-

gotten if it was in September or when, but since he suddenly had to face this situation his denial of the Navy situation has been broken. He hasn't denied that he has been obsessed with this situation. He has been terribly afraid of it. Whereas it never seemed to appear, he never -- when I learned from Mr. Standard that he was in the Navy all this time, I must admit I am somewhat taken in by Dr. Foster's denial because he never spoke as if he was in any way connected with the Navy and I had never any feeling that he was connected with the Navy.

Of course, throughout his medical school and internship and residency he was preoccupied with so many other matters, but it wasn't, I am sure, in Dr. Foster's mind that he was in any way connected with the Navy. Perhaps there was a feeling that he would have to send a letter out to answer some correspondence, but he always saw himself as outside of the service.

Since this sudden confrontation he has been very aware of the presence of the Navy, of the existence of the Navy, and all of a sudden he seems to be saying to me all the time, "This is unthinkable. I can't be in a military organization. I will have nothing to do with military organizations." He never spoke of

military organizations before except in a very distant and abstract way.

So it is certainly as if something has crystallized in him. It is as if where there was denial before there is now an excessive preoccupation. It is as if he has never considered himself in any imminent military situation before this time.

Q Has Dr. Foster discussed with you the possible sources of belief that might have come from an intellectual process rather than from within himself? You have described to us the possible sources of his belief in his own makeup and I wondered if he has discussed with you the intellectual sources of this belief.

A Well, Dr. Foster has collected articles on -- there's one here -- on people who have thought in similar ways, for many years. I notice one here that he collected in 1966. A Prof. Wald spoke of man's position in the universe, which Dr. Foster said that day when I remember he brought it in, "This is exactly what I have come to independently," this very feeling about man's unusual position in the universe, man's higher level.

So he has collected articles on this, he has written about this extensively -- yes, he has been interested in this issue for a very long time.

COMDR. SWEENEY: Any questions, Mr. Standard?

MR. STANDARD: I have just one area of questioning. Perhaps I can resolve it with one question, and it is consistent with the inquiry just made by you, Commander.

REDIRECT EXAMINATION

BY MR. STANDARD:

Q Is there anything which is unique which has occurred in your mind in the period, let us say, from June or July 1973 to today which -- and I am now referring to something other than that which you have described, namely, the imminence of activation or service -- have you noted anything else which you could describe as an event which served to mature or crystalize a belief which you have described as being nascent since you have known him? Has there been either an event or a series of events or conversations?

A Well, Dr. Foster was very upset by the Vietnamese War. This was -- I don't think he ever discussed it in anything but horrified tones. He spoke of this as a terrible human tragedy and he would sometimes speak of this at great length during a session, what a terrible thing this is, and it would be difficult at times to get him back to his immediate problems.

So it was an event, if you will, that had something to do with this, I think.

Q You are referring to a war which is still not over for some people, but as far as the United States involvement appears to have wound down.

A Yes.

Q Do you recall approximately when this expression of horror with respect to the Vietnamese War took place? Was it in 1965, when the war -- I think that was when the war began to escalate -- or was it more recently, was there something in particular which occurred which you can remember -- and if you can't remember you don't, of course, but if there was can you point it out?

A I can't, really. I remember that throughout his sessions from the beginning of the war, from the time it began to appear in the newspapers Dr. Foster has always pushed from his mind most violent aggressive things. I don't think he could push this from his mind. It was to him too terrible an event.

I can't think of anything in particular that has changed his emphasis, no.

Q Well, let me put it another way if I can.

Have you noticed anything in the recent period, which I will refer to as the last year, which has made

it impossible for him to serve in the armed forces?

A Mr. Standard, I have the feeling he never could have served in the armed forces at the time. I have the feeling that any time he would have been presented with this situation something like this would have happened. So I can't --

Q When you say something like this, let's be more specific. Is it the recognition of activation? You now have been told by me prior to this meeting on one occasion and you know that he has been in the Navy in fact since at least 1966. Is it your view that his belief which he has always held , as far as you know, crystalized in a way in the period when he knew that he had to be activated? Is that your testimony?

A Yes.

Q Is that the event which you find prominent?

A That's certainly true. The war had always been some peripheral thing to him, however horrible. All of a sudden he was in the middle of it, you could say, and he was absolute in his attitude that anything military was unacceptable.

MR. STANDARD: I have no further questions.

RECROSS EXAMINATION

BY COMDR. SWEENEY:

Q Doctor, were you treating Dr. Foster as a patient during his internship?

A I was, yes.

Q I wondered if he had ever -- or you have ever gone into with him the subject of death.

A I have not discussed this with him. Dr. Foster does have a great interest in people in very severe trouble and a dying patient seemed to him at this point a person in a kind of a catastrophic situation and he was very interested in helping such people. It seemed to me a somewhat extreme point of view because his talents could be better used, I thought, in a rather cold-blooded way, perhaps, for people who were not dying but he insisted on this emphasis.

Q You have not discussed with him then the problems of the way he reacted in the summer of 1973 because of the death of a young patient?

A Yes, he spoke of that patient and he was, as always with his patients, terribly sympathetic and terribly moved and involved. But this was not atypical for Dr. Foster. He was terribly involved with every patient he had and over-involved. Dr. Foster worked himself to exhaustion with his patients. That was one of the difficulties he had all the way through his internship and

residency.

Let me just mention that Dr. Foster came to me for 14 years four times a week, often through the summer because there were several years I didn't take a vacation because of my writing, and he was one of the patients that I insisted on seeing all this time because of the importance of his problems, because of the value of Dr. Foster as a human being, and this was, this long and terribly costly process was paid for by his father because it was considered so necessary. So I know him very well and I value him very highly as a doctor, as a human being.

There is one other thing I might say. Just this week, by complete coincidence, in a psychiatric periodical, the Clinical Psychiatry News, there is an article "Military Psychiatrist Faces Conflicting Roles," and the psychologist, who I believe has been in the service many years who wrote this article, says that the term "military psychiatrist" is a misnomer, that it should be psychiatric military officer, and among the things he says is that a psychiatrist in uniform owes his primary allegiance to the military and not to his patient. The individual in the military is viewed as being part of a team and the role of the psychiatrist is to support the

team's weakest spots.

He also says: The primary role for the uniformed psychiatrist is to return the patient to duty. And he also says: Psychiatrists in the military also have a tremendous amount of control over their patients' lives.

Now, I tore this out to bring in because I have the feeling that if I were judging Dr. Foster from the point of view of the Navy I don't know if I would want him in control of the lives of military people when he is so profoundly anti-military, even if some means could be devised to get him into the military. It seems to me that this is an issue which is so unproductive from the -- I know I am speaking out of turn that way here, which isn't my role, but even from the Navy's point of view, that he would be so unproductive a psychiatrist that to pursue getting him into the service -- and I wonder if he could function as a psychiatrist in the service, I wonder if his anxiety level wouldn't be beyond that of his patients, I wonder if he wouldn't be so anti-military that he wouldn't be very good at returning patients to the team. So I would like to leave this to you (handing to Comdr. Sweeney).

MR. STANDARD: No further questions.

COMDR. SWEENEY: Thank you, Doctor.

(Witness excused.)

(Dr. Foster returns to hearing room.)

COMDR. SWEENEY: Would you put in the record the "Clinical Psychiatry News," May 1974, page 8, as offered by the previous witness.

(Page 8 of May 1974 issue of the "Clinical Psychiatry News" was received into the record.)

COMDR. SWEENEY: I am going to ask Dr. Foster to testify on the record for us with respect to his request for discharge as a conscientious objector.

J E F F R E Y F O S T E R , residing at 10 East End Avenue, New York, New York, was called as a witness and, being first duly sworn, testified as follows:

COMDR. SWEENEY: Doctor, we have made part of the record the application for discharge and the supporting documents. But there are some questions that I would like to ask in connection with the statements in the application.

DIRECT EXAMINATION

BY COMDR. SWEENEY:

Q In section 14 of your application, beginning at page 2, there is a description of your presently-held beliefs.

A This is the first paragraph you are referring to?

Q All of section 14, I believe.

The instruction asks for an explanation how the applicant's beliefs have changed or developed, including an explanation of what factors, how and when and from whom or from what source training received and belief acquired that caused the change in or development of conscientious objection beliefs.

Doctor, would you, for the record, tell us how the beliefs in paragraph 14 lead to an objection to serve in a professional capacity under the Department of Defense?

A Yes, sir. The beliefs that I expressed in this paragraph, in their evolution, in their content, lead me to conclude that man, as I expressed here, has a very special place and purpose in this world and universe and that this is a peaceful constructive and rational purpose, and it is for those reasons that I cannot participate in a destructive mechanism, which the military is and which a military physician is directly or indirectly a part of, in any capacity.

Q Doctor, I notice that in paragraph 2 of paragraph 14 your statement seems to stress the source of

your beliefs in a natural evolution, a selection process, an unimpeded selection process, which really appears to be an elimination process and I wondered how that leads to an rejection of violence, since the elimination process seems to be violent itself.

A First let me say that I do not view this as an elimination process but rather as a refining, selecting and increasingly sophisticated kind of process of a building up rather than an eliminating and tearing down in terms of what I was referring to.

It is my belief that there is in this universe a supreme force, a primary force which has evolved inanimate matter into stars, into planets and into life and this evolutionary force has continued to eventuate in the refinement of the most sophisticated and intelligent species known in the entire universe, which is man, and this man, as a result, has a very special function and purpose because of this biologic selection, refinement and endowment that occurred over millions of years, and that certainly the purpose, the antithesis of this purpose, which is constructive and peaceful and is to increasingly gain intimate knowledge of both the immediate and surrounding world and universe, the direct antithesis of this biologic purpose is his own self-destruction and

of his fellow men.

I would like to comment that these views, which I arrived at quite independently at the period to which I allude to as before medical school, and which have been characterized by Chaplain Otto as being quite personal and rare in nature, in fact are not.

I would like to give to you as an example an article that I clipped out of the New York Times. It is dated Tuesday, March 8, 1966, and it describes a lecture given by a Prof.George Wald of Harvard University, who I believe two years ago received the Nobel Prize in medicine and physiology for his work in essentially evolutionary aspects of the visual system in fish.

In this article Prof. Wald expresses his beliefs, as he puts it, that man in his intelligent capacity and unique capacity gains his grace in being the means by which, in effect, an inanimate universe evolves animate life forms and ultimately man, by which, in a sense, man's functions, his eyes and ears, views this inanimate universe and comes to know itself.

This so strongly concurred with my independently and previously derived beliefs that I cut this out. It was just that striking to me.

Q Doctor, you just used the expression "grace."

I wonder if you would define what you mean by this.

A Well, it is my understanding that grace is a theologically-loaded word in which man in achieving a state of grace is fulfilling his natural function as his ultimate evolutionary process has ordained, and it is in this fulfilling of what he was supposed to be doing that this state of grace, as I understand Prof. Wald's use of it, is attained.

I would like to add one thing beyond what Prof. Wald was quoted as expressing in which article, which I believe is fully consistent with his beliefs, and that is this: that I believe that not only does the inanimate universe, via man, learn of itself and that man is to this extent extraordinarily unique in purpose and function but that also in this very same process of learning about the universe man learns about himself and himself perceives as he comes to know his fellow man and his origins some sense of his own fate and the brotherhood that he shares with his fellow man, the common purpose which they share and the common peaceful purpose which we are all here for.

Q Dr. Foster, you mentioned Prof. Wald's article and statements as one source of an understanding of life similar to yours.

I wonder if you could list for us other sources of belief that have animated your present rejection of violence in all forms. I am specifically looking for readings or conversations or travel or study or meditation.

A Yes, sir. Well, I would list several that I referred to in the application and perhaps some which I did not.

I have met and been exposed to and worked with scientists who have themselves been outspokenly involved against violence at a time that it was certainly going very strenuously in the years that I met him, in terms of Vietnam. For instance, I refer to my work in the brain research laboratory where the director, Prof. Roy John, was a very active spur to many private groups in his own free time. He expressed his views against the war to me many times. This was just after my first year in medical school that I was closely associated with him during this summer doing research with him.

When I did research at the Rockefeller University in the laboratory of Prof. Alfred E. Mirsky, who is a very noted scientist, he also expressed to me his aversion to what was happening, the use of violence destructively, and there have been a number of other scientists that I

have spoken with who have expressed similar beliefs.

In terms of my medical education and most particularly in terms of my psychiatric education and reading -- and this, of course, all in terms of your question, assumes that I have already made reference to the hundreds of hours I have put in before entering medical school, in these hundreds of pages of writings and beliefs that I have already alluded to --

Q Would you please refer to the title of this thesis that was referred to previously. I have it described as a 400-page thesis. Would you tell us the title and perhaps describe it a little bit?

A Yes. I am pausing because I did not bring the works with me and I at no point gave them a singular unified title except the one point, and I am trying to remember the wording of this and that was a bioevolutionary approach to life and the human mind.

Q This was a thesis for an academic institution?

A No, this was a private period of writing, contemplation, reading and studying, which I referred to that produced these 400 pages that I referred to in my application. So between them, these experiences with the scientists that I collaborated with, the medical school professors and fellow students, who had very

strong views against the way -- and all wars, I can't remember anybody distinguishing one war from another at that time, and particularly in view of my psychiatric training and experiences, in dealings with violence, in reading about violence, in trying to understand it clinically as it occurs in terms of homicidal or suicidal people, in terms of my clincial exposure to a great deal of this sort of lifestyle in my almost daily contact for the year and a half working in our methadone maintenance program for drug addicts.

I have by this kind of study, from my clinical training and my readings, derived further conviction and understanding as to what is violence and how I categorically cannot accede to it or condone it in any way.

Q Doctor, when in your medical school training were you first exposed to death? When did you first see someone die?

A Do you mean actually see the process of dying or see a dead person?

Q The process. No, I don't mean the dead person.

A In terms of the process of dying I did not see that process until I was a medical intern.

Q Can you describe to us the circumstances of this and give us approximately the time and what effect

it had on you?

A The time began early in my medical internship. The effects were most striking.

For example, the very first night that I was on duty as a medical intern, which was only several days after I began my internship, there was a person who was about to have open-heart surgery the following day at another hospital. I was suddenly called upon to see, because the nurses reported that he was not breathing. This sick individual had had a tremendous investment in medical attention,previous surgery on his heart and a tremendous amount of medical attention riveted to him as far as he was that next day to be operated upon. So there were many doctors involved.

At the time that I arrived at this individual's bedside he was clinically dead but I had to make the decision as to whether it was justified or not to attempt resuscitation, and this was an extremely difficult position insofar as this was the first time I had encountered anyone in this position, and, second, I was well aware of the total amount of attention that this particular individual was receiving and the plans for his hopefully reparative surgery the very next day.

It was a very difficult decision at that time

to say that resuscitation efforts wouldn't avail him of anything and I did not request them and I declared him medically deceased, dead, at this point in my examination. This was an extremely and particularly difficult situation for me because of the circumstances that I described and it left quite an impact with me.

Q Doctor, were you called on to make a similar decision in other circumstances after that first night of your internship until the time in August 1973 when your young patient described in document A-4 died?

A You mean the decision to declare somebody dead?

Q Yes, similar relationships with the dying -- until you encountered the patients described in document A-4.

A I didn't have. But I would like to emphasize one thing about this person who I just described, and that is: This was not a patient of mine -- which is very important. This particular patient that I just described to you was a patient of another physician and because I was on duty that night I was responsible for all the patients on this ward and would be called upon for any medical emergency that occurred with any patient, whether it be mine or anyone else's.

There have been several occasions where patients

of mine have died and there have been a few instances in which medical resuscitation was attempted.

I can recall no case comparable, however, between that first patient that I just described to you and the present patient that I describe in this dying-patient article that had such an impact on me, and the impact in these two instances was quite different. In the first case it was really the impact of having to make an on-the-spot decision, which I had never in my left been called upon to make before, for a patient whom I was not familiar with and whom I knew there were great expectations for the very next day, a matter of hours, and nobody expected for him to die that evening.

In this particular patient that I describe in this dying-patient presentation, I was deeply involved with this patient, I knew her intimately well and worked with her in a very exceptional way that few psychiatrists are ever called upon to do, and the impact of her death was without parallel in my medical experience.

COMDR. SWEENEY: I have no further questions.

Mr. Standard?

MR. STANDARD: I have none.

COMDR. SWEENEY: Then we can conclude now at 12:25.

(Whereupon, at 12:25 p.m., the deposition was closed.)

C E R T I F I C A T E

STATE OF NEW YORK)
: ss
COUNTY OF NEW YORK)

I, ALBERT STERN, a Certified Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That JOEL MARKOWITZ and JEFFREY FOSTER, the witnesses whose depositions are hereinbefore set forth, were duly sworn by Comdr. Sweeney, and that the foregoing record contains the true and accurate testimony of each of the witnesses.

And I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of June 1974.

ALBERT STERN, CSR

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Joel Markowitz	3	13	17	20
Jeffrey Foster	23			

- - -

E X H I B I T S

DESCRIPTION	PAGE
Page 8 of May 1974 issue of the "Clininal Psychiatry News"	23

- - -

EXHIBIT R - REPORT OF INVESTIGATING OFFICER
DATED JUNE 21, 1974

21 June 1974

From: Cdr. Joseph C. Sweeney, JAGC, USNR-R
To: Commandant, Third Naval District

Subj.: Report of Investigating Officer in the case of Lt. JEFFREY R. FOSTER, MC, USNR-R, 070-34-4047/2105, regarding application for discharge from the Naval Service by reason of conscientious objection.

Ref: (a) BUPERS Man. 1860120

Encl: (1) Case file of Lt. Foster, dated 3 May 74, as amended by CONTHREE ltrs of 6 May 74 and 23 May 74

(2) Verbatim Transcript of Hearing held on 31 May 74, together with transmittal ltr. from Lt. Foster's attorney dtd. 4 Jun 74

(3) COMTHREE appointing order dtd. 3 May 74.

1. In accordance with the provisions of Encl. (3) and Para. 104 Ref. a, the undersigned contacted subject officer and arranged to hold a Hearing in accordance with Para. 10(b) of ref. a, at which it was agreed that subject officer and a witness on his behalf would testify under oath.

2. Prior to the hearing the undersigned reviewed Lt. Foster's file, reviewed the referenced provisions of Bupers Manual and consulted applicable legal authorities as follows: U.S. v. Seeger, 380 U.S. 246 (1965)
Welsh v. U.S., 398 U.S., 333 (1970)
Gillette v. U.S., 401 U.S. 437 (1971)
Fein v. S.S.B. #7, 405 U.S. 365 (1972);
and the following articles: Field, "Problems of Proof in Conscientious Objection Cases", 120 U. Penna. L.R. 870-950 (1072) and Zillman, "In-Service Conscientious Objection: Courts, Boards and the Basis in Fact." 10 San Diego L.R. 108-142 (1972).

3. On 31 May 1974 the undersigned officer held a Hearing in subject case in a Seminar Room of The Fordham Law School, Lincoln Center, N.Y., N.Y. 10023. Subject officer was represented by his private attorney, Michael B. Standard, Esq. of Rabinowitz, Boudin & Standard, 30 East 42nd St., N.Y., N.Y. 10017. (212) OX. 7-8640. The Hearing began at 1115 hours and adjourned at 1225 hours. The Hearing was recorded verbatim by a court reporter retained through subject officer's attorney.

4. Prior to the commencement of the Hearing, and at the specific request of subject officer and his attorney, it was agreed that subject officer would not be present during the testimony of the witness, Dr. Joel Markowitz.

5. At the outset it should be noted that subject officer's connection with the naval service has been minimal, he having been commissioned while a medical student under the Berry Plan in 1966 and without ever serving on active duty.

6. At the Hearing, Dr. Joel Markowitz, M.D. a psychiatrist for twenty years, and who has been consulted by subject officer for the past fourteen years testified. Dr. Markowitz's views on conscientious objection to military service are opposite from those of subject officer. Dr. Markowitz testified concerning the development of subject officer's moral and ethical beliefs and the origin of such beliefs. (See Record, pp. 3-23).

7. Thereafter, Lt. Foster testified at his own request, under questioning by the undersigned (See Record, pp. 23-33), At the conclusion of his testimony Lt. Foster executed the Statement concerning Veterans Administration Benefits.

8. It is also noted that subject officer is willing to perform civilian work under the Conscientious Objection Program of the Selective Service System

9. FACT:

It is considered that the claim of subject officer, as established by the totality of the record and by the Hearing in the case, has not been made frivolously, and that the minimum objective standards now established by law and regulation for conscientious objector discharge have been met.

10. Opinion:

By reason of the entire record and by reason of observation of the personal testimony and demeanor of Lt. Foster the undersigned is persuaded that Lt. Foster sincerely holds ethical beliefs which require him to refrain from participation in any war at any time.

11. Recommendation:

It is recommended that Lt. Foster be discharged from the naval service by reason of conscientious objection.

Joseph C. Sweeney

Copy to: Michael B. Standard, Esq.
Lt. Jeffrey R. Foster, MC., USNR-R

EXHIBIT S - DECISION OF CHIEF OF NAVAL PERSONNEL
DATED JULY 11, 1974

Pers-82
Ser 1561/92

11 JUL 1974

From: Chief of Naval Personnel
TO: Lieutenant Jeffrey R. FOSTER, MC, USNR-R, 070-34-4047/2105

Subj: Your status in the U. S. Naval Reserve

Ref: (a) COMTHREE ltr D-531/VMM:pac 070-34-4047/2105 of 27 June 1974 w/encls
(b) BUPERSMAN 1860120
(c) Your Rebuttal to Reports of Psychiatrist and Chaplain Interviews of 5 April 1974

1. This acknowledges receipt of reference (a) which forwarded your request dated 20 March 1974 for classification and discharge as a conscientious objector in accordance with reference (b). Reference (c) is your personal rebuttal to the reports of the Psychiatrist and Chaplain interviews.

2. Your application with all its supportive documents has been afforded careful and complete review. On the basis of this review it is apparent from the testimony of your Psychiatrist that prior to entry into the Navy you were opposed to war and killing. Your Psychiatrist stated that your non-violent attitudes haven't in any way been modified within the past 14 years. While your concerns and reservations may now be stronger there is nothing to indicate that your present beliefs are in substance and foundation any different than those you held before you accepted your commission. While the Chief of Naval Personnel recognizes your sincere desire for discharge your application and the attendant correspondence are not considered supportive of your request for discharge as a conscientious objector.

3. In view of the foregoing and upon careful and complete review, your application for discharge as a conscientious objector in accordance with reference (b) is denied.

B. C. WILCOX, Jr.
Assistant Chief for Military
Personnel Security and Performance
Acting

Copy to:
COMTHREE

EXHIBIT S

LETTER OF R.W. SCHUERCH, ASSISTANT CHIEF OF STAFF
FOR NAVAL RESERVE AND TRAINING, DATED
JUNE 27, 1974

96a

HEADQUARTERS OF THE
COMMANDANT THIRD NAVAL DISTRICT
FLUSHING & WASHINGTON AVENUES
BROOKLYN, NEW YORK 11251

IN REPLY REFER TO:
D-531/VMM:pac
070-34-4047/2105
JUN 27 1974

From: Commandant, THIRD Naval District
To: Chief of Naval Personnel (Pers-82)

Subj: Application for Conscientious Objector Status in case of LT Jeffrey R. FOSTER, MC, USNR

Ref: (a) BUPERSMAN 1860120

Encl: (1) CDR Joseph C. SWEENEY, JAGC, USNR-R, Interviewing Officer's ltr of 21 Jun 74 w/enclosures
(d) DOD SUMMARY SHEET FOR REVIEW OF CONSCIENTIOUS OBJECTOR APPLICATION (DD FORM 1589) of 26 Jun 1974

1. In accordance with reference (a), enclosures (1) and (2) are submitted for consideration.

R. W. SCHUERCH
Assistant Chief of Staff
for Naval Reserve and Training

Copy to:
CDR Joseph C. SWEENEY, JAGC, USNR-R
LT Jeffrey R. FOSTER, MC, USNR

REQUEST FOR DELAY FOR RESIDENCY TRAINING, PART OF THE CERTIFIED COPY OF THE OFFICER RECORD OF LIEUTENANT FOSTER BY THE BUREAU OF NAVAL PERSONNEL

97a

NAVY

MUST BE TYPED	REQUEST FOR DELAY FOR RESIDENCY TRAINING	Form Approved Budget Bureau No.

For use by physicians selected by the Department of Defense to delay their active duty until completion of residency training.
Return this form, after Part I and Part II have been properly executed, to:
Assistant Secretary of Defense (H & E) ATTN: Berry Plan Office, Pentagon, Washington, D C 20301

PART I - REQUEST FOR RESIDENCY TRAINING *(To be completed by physician applicant)*

DATE _____ *(Day - Mo - Yr)*

I HEREBY REQUEST THAT MY ACTIVE MILITARY SERVICE BE POSTPONED FOR COMPLETION OF TRAINING IN THE SPECIALTY OF _____ *(the ultimate specialty for which training is desired)* FOR A COMPLETE TRAINING PROGRAM TOTAL OF _____ YEARS; BROKEN DOWN, WHERE APPROPRIATE, AS FOLLOWS:

PRE-SPECIALTY *(Yrs)*	SPECIALTY *(Yrs)*	SUB-SPECIALTY *(Yrs)*	TOTAL *(Yrs)*

I ANTICIPATE MY RESIDENCY TRAINING, AS LISTED ABOVE, WILL TERMINATE *(Mo and Yr)* _____. IN THE EVENT I ELECT TO CHANGE SPECIALTY, TRAINING HOSPITAL, OR TERMINATE MY RESIDENCY TRAINING FOR ANY REASON, I WILL IMMEDIATELY NOTIFY THE ABOVE CITED ADDRESSEE.

NAME OF PHYSICIAN *(Must be typed)* *(First-MI-Last-Jr-Sr etc.)*	DATE OF GRADUATION _____ *(Day-Mo-Yr)* ☐ MEDICAL SCHOOL ☐ SCHOOL OF OSTEOPATHY
STREET ADDRESS OF PHYSICIAN	SELECTIVE SERVICE NO. / SOCIAL SECURITY NO. 0
CITY-STATE ZIP CODE 0	SIGNATURE OF PHYSICIAN

PART II - HOSPITAL AGREEMENT *(To be completed by authorized hospital representative)*

DELAYS ARE APPROVED FOR THE MINIMUM NUMBER OF YEARS REQUIRED FOR THE TRAINING PROGRAM OF THE HOSPITAL PROVIDING THE TRAINING, AS INDICATED IN THE "DIRECTORY OF APPROVED INTERNSHIPS AND RESIDENCIES" OR APPROPRIATE COMPARABLE OSTEOPATHIC PUBLICATION. IF THE LENGTH OF THE PROGRAM INDICATED EXCEEDS THIS, IT MUST BE EXPLAINED ON THE REVERSE SIDE OF THIS FORM TO AVOID DELAY IN FURTHER PROCESSING. THE TRAINING PROVIDED MUST MEET THE REQUIREMENTS FOR SPECIALTY BOARD CERTIFICATION.

THE ABOVE NAMED PHYSICIAN HAS BEEN ACCEPTED BY THIS HOSPITAL FOR RESIDENCY TRAINING IN _____ *(Name of specialty)*. THIS TRAINING WILL BEGIN _____ *(Day-Mo-Yr)* AND TERMINATE _____ *(Day-Mo-Yr)*.

THE LENGTH OF THE APPROVED TRAINING TO BE SPONSORED BY THIS HOSPITAL IS ____ YEARS. ANTICIPATED DATE APPLICANT WILL MEET MINIMUM FORMAL RESIDENCY TRAINING REQUIREMENTS ESTABLISHED BY THE BOARD FOR CERTIFICATION IN SPECIALTY SPECIFIED ON LINE 2 PART 1 IS _____ *(Mo-Yr)*. *(Omit if all training is not to be sponsored by hospital sponsoring the first year)*

IT IS THE UNDERSTANDING OF THIS HOSPITAL THAT THE ACTIVE MILITARY SERVICE OF THE ABOVE NAMED PHYSICIAN WILL BE POSTPONED FOR THE PURPOSE OF PERMITTING HIM TO COMPLETE THIS RESIDENCY TRAINING WHICH IS ESSENTIAL TO THE ARMED FORCES. THIS IN NO WAY BINDS THE HOSPITAL FOR CONTINUED TRAINING SHOULD THE PHYSICIAN PROVE UNSATISFACTORY.

IN THE EVENT THE PHYSICIAN PROVES UNSATISFACTORY OR FOR ANY REASON DISCONTINUES TRAINING IN THE ABOVE SPECIALTY, THE HOSPITAL WILL NOTIFY THE ABOVE-CITED ADDRESSEE.

IT IS FURTHER UNDERSTOOD THAT AS A RESERVE OFFICER ON INACTIVE DUTY, THIS PHYSICIAN RECEIVES NEITHER PAY NOR ALLOWANCES FROM THE ARMED FORCES AND IS, THEREFORE, ELIGIBLE TO ACCEPT THE NORMAL STIPEND PAID RESIDENTS BY THIS INSTITUTION.

NAME OF HOSPITAL *(Must be typed)*	SIGNATURE OF HOSPITAL OFFICIAL
STREET ADDRESS OF HOSPITAL	TYPED NAME AND TITLE OF ABOVE OFFICIAL
CITY-STATE-ZIP CODE	DATE *(Day-Mo-Yr)*

1 ANNUAL OFFICER QUESTIONNAIRE
1 INACTIVE DUTY RESERVE OFFICER

Items 1 through 10 have been prepopulated to convert from magnetic tape records. It may not contain all incorrect, more correct ones if items are blank complete if applicable.

NOTICE

98a S 3

1 [X] IF "X" APPEARS IN THIS BOX, YOUR SERVICE RECORD IS HELD AT NPRC	2 DESIGNATOR	3 RPT SYMBOL	4 DATE	5 SERIAL NUMBER	6 SOCIAL SECURITY NUMBER
	USNR-R	2105	24 NOV 42	710039	07C 34 4047

7 PRIMARY DEPENDENTS (See Instruction 3a)
WIFE AND 1 CEPENDENT CHILD

8 SECONDARY DEPENDENTS (See Instruction 3b)
NO SECONDARY DEPENDENTS

LT JEFFREY ROBERT FOSTER
80 EAST END AVE
NEW YORK, NY 10028
0380000

IF ADDRESS WRONG SEE INST 2d ON BACK

9 ACTIVE MILITARY SERVICE (Include enlisted and service with United States and Allied Forces. Do not include Active Duty for Training.)

[NO] KOREAN EMERGENCY (25 Jun 50 to 31 Jan 55)	[NO] RECALLED OR EXTENDED FOR BERLIN EMERGENCY (1961)	[NO] RECALLED OR EXTENDED FOR SOUTHEAST ASIA (1968)	[NO] OTHER ACTIVE DUTY (Specify Dates)

10 FOREIGN LANGUAGE PROFICIENCY (See instruction 3 c. Record proficiency as L, T or X) NONE

LANG:	PRO:	LANG:	PRO:	LANG:	PRO:

11 COLLEGE, UNIVERSITY, PROFESSIONAL OR TECHNICAL SCHOOL (Name and location)

	ATTENDED FROM	ATTENDED TO	SEM HOUR CREDITS	DEGREE TITLE	DEGREE DATE	MAJOR FIELD OF STUDY	SPECIALIZATION WITHIN MAJOR
PRINCETON UNIVERSITY, N.J.	1960	1964	120	BA	JUNE 64	PHIL SCI.	
COLUMBIA U, N.Y. N.Y.	1964	1968	66	—	—	PRE MED	
NEW YORK MEDICAL COLLEGE, N.Y.	1968	1972	132	MD	JUNE 72	MEDICINE	

12 NAME AND ADDRESS OF EMPLOYER (If Federal Government, include title of agency)
MT SINAI HOSPITAL, MADISON AVE & 100TH ST, N.Y.C. 10029

KIND OF BUSINESS
PHYSICIAN.

EXACT TITLE OF YOUR POSITION (If Civil Service, include grade. Give present and former position if change occurred during last year)
RESIDENT, DEPT. OF PSYCHIATRY

MOS PRESENT POSITION	NO. EMPLOYEES SUPERVISED (Present position)	MOS FORMER POSITION
3		

BRIEF DESCRIPTION OF DUTIES AND RESPONSIBILITIES. INDICATE SPECIAL SETS OF LICENSES IN EFFECT. (Bar Membership, CPA, Denomination if a member of the Chaplain Corps, Medical or Dental Board Certification, Merchant Marine, Professional Engineer or Engineer-in-training, Registered Architect or Architect-in-training, etc.)

New York State License # 109500

13 CIVIC RESPONSIBILITIES, COMMUNITY ACTIVITIES
NONE.

14 RESERVE UNIT OF WHICH A MEMBER	15 BILLET ASSIGNED AND MONTHS IN THIS BILLET	16 COMMAND HOLDING YOUR SERVICE RECORD
NONE	NONE	

17 ACDUTRA DURING PAST FISCAL YEAR ACTIVITY:	DUTIES:	DATES:
NONE		

18 AVIATION EXPERIENCE PILOT/NFO (Last 12 Mos.) NONE

	MODEL				MODEL			NFO/TYPE
MILITARY				CIVILIAN				
	HOURS				HOURS			

CERTIFIED TO BE COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF

(Signature) Jeffrey Robert Foster

DATE OF THIS REPORT
Sept. 16, 1972

CLASSIFICATION: DATA SUBJECT TO CONFIRMATION BY COMPETENT AUTHORITY WHEN REQUIRED

CHIEF OF NAVAL PERSONNEL
COPY 2

SIGN ALL COPIES, REMOVE CARBONS, THEN RETURN COPIES 1, 2 AND 3 TO NPMC. RETAIN COPY 4 FOR YOUR PERSONAL FILE

X	USNR-R	2105	24 NOV 42	710039	070 34 4047

WIFE AND 1 DEPENDENT CHILD — NO SECONDARY DEPENDENTS

LT JEFFREY ROBERT FOSTER
80 EAST END AVE
NEW YORK, NY 10028
0380000

IF ADDRESS WRONG, LIST CORRECT ADDRESS ON DAC

ACTIVE MILITARY SERVICE	KOREAN EMERGENCY SERVICE (Dates)	FORMER ENLISTED SERVICE	EXTENDED ACTIVE DUTY	OTHER ACTIVE DUTY (Specify Dates)
NO	NO	NO	NO	NO

10. FOREIGN LANGUAGE PROFICIENCY: NONE

11. COLLEGE OR UNIVERSITY ATTENDED (Including Service Schools)

	DATES		DEGREE		MAJOR FIELD OF STUDY	SPECIALIZATION WITHIN MAJOR
	FROM	TO	HRS/WKS	TYPE		
NORTHWESTERN U. EVANSTON, ILL	1960	1964	180	BA	POLIT. SCI.	
COLUMBIA U. N.Y., N.Y.	1964	1966	66		PRE-MED.	
NEW YORK MEDICAL COLLEGE NY, NY	1966	1970	4 YRS.	M.D	MEDICINE	

MT. SINAI HOSPITAL, 100TH ST & 5TH AVE, N.Y., N.Y. 10029 — PHYSICIAN

ASST. RESIDENT, DEPT. OF PSYCHIATRY — 4

New York State License # 101,800

12. CIVIC RESPONSIBILITIES, COMMUNITY ACTIVITIES: NONE

13. NONE

14. NONE

15. COMMAND HOLDING YOUR SERVICE RECORD

17. ACADEMIC HONORS, AWARDS, YEARBOOK ACTIVITIES: NONE

18. SIGNIFICANT NAVAL TRAINING AND QUALIFICATIONS (CDC, CIC, Type Ship Qualifications, Submarine, Ship Salvage Diving Officer, EOD, UDT, Parachutist, etc.): NONE

19. SIGNIFICANT NAVAL AVIATION EXPERIENCE PILOT INFO

MODE	HOURS	CATS	PC CHKG	IN FLIGHT	TOTAL PLT HRS	TOTAL JET HRS	TOTAL HRS LAST 6 MOS	TOTAL CATS	CIVILIAN FLYING HRS (Last 12 Mos.) S.E. PROP	M.E. PROP	JET	HELO
NONE									NONE			

CERTIFIED CORRECT: Jeffrey Robert Foster — Oct 16, 1971

CHOP OF PAGE 2

AND ENTER ON LINE 4 FOR YOUR PERSONAL FILE

100a [redacted] 22 Jan. 1971

To whom it may concern:

This is to inform you that I am presently taking a straight medical internship at New York Medical College — Metropolitan Hospital Center, 1901 First Avenue, New York, N.Y. The internship began on July 1, 1970 and is one year in duration.

Jeffrey R. Foster, M.D.

FINISH FILE FIRS P3131 710039

ANNUAL QUALIFICATIONS QUESTIONNAIRE
INACTIVE DUTY RESERVE OFFICER

Items 1 through 12 have been entered by a computer from magnetic tape records. If any information shown is incorrect, make corrections in items one thru complete if applicable.

← NOTICE

101a 3

1.	2. GRADE, RANK	3. DESIG. NO.	4. DATE OF RANK	5. DATE OF BIRTH	6. FILE NUMBER
☐ I CERTIFY THAT THE INFORMATION IN ITEMS 2 THROUGH 12 IS CORRECT	LTJG	1515	26 NOV 42	01 OCT 69	710039

7. DEPENDENTS (See Instruction 3b)
WIFE ~~NO CHILD~~ ROSA ADELE 30 1970

8. SECONDARY DEPENDENTS (See Instruction 3c)
NO SECONDARY DEPENDENTS

9. SELECTIVE SERVICE NUMBER
30-10-42-1710

10. SOCIAL SECURITY NUMBER
070 34 4047

LTJG JEFFREY ROBERT FOSTER
80 EAST END AVE APT 6A
NEW YORK, NY 10028
0372015

IF ADDRESS WRONG SEE INST. 2e ON BACK

11. ACTIVE MILITARY SERVICE (Include enlisted and service with United States and Allied Forces. Do not include Active Duty for Training.)

KOREAN EMERGENCY (25 Jun 50 to 31 Jan 55)	RECALLED OR EXTENDED FOR BERLIN EMERGENCY (1961)	RECALLED OR EXTENDED FOR SOUTHEAST ASIA (1968)	OTHER ACTIVE DUTY (Specify Dates)
NO	NO	NO	NO

12. FOREIGN LANGUAGE PROFICIENCY (See instruction 3 d. Record proficiency as L, I, F or N): NONE

LANG:	PRO:	LANG:	PRO:	LANG:	PRO:

13. COLLEGE, UNIVERSITY, PROFESSIONAL OR TECHNICAL SCHOOL (Name and location)

	ATTENDED FROM	ATTENDED TO	SEM. HOUR CREDITS	DEGREE TITLE	DEGREE DATE	MAJOR FIELD OF STUDY	SPECIALIZATION WITHIN MAJOR
NORTHWESTERN U, EVANSTON, ILL	SEPT 64	JUNE 68	180	BA	JUNE 68	BIOLOGICAL SCI	ENDOCRINOLOGY
COLUMBIA U, NEW YORK, NY	SEPT 68	JUNE 69	60	MD	JUNE 69	PRE-MEDICAL	ENDOCRINOLOGY
NEW YORK MEDICAL COLLEGE, NY, NY	SEPT 69	PRESENT	(1ST YR)	MD	JUNE 73	MEDICINE	MEDICO-PSYCH

14. NAME AND LOCATION OF PRESENT EMPLOYER (If Federal Government, include bureau or agency)
NEW YORK PSYCHIATRIC INSTITUTE AT COLUMBIA-PRESBYTERIAN MEDICAL CENTER
ADDRESS: 1051 RIVERSIDE DRIVE, NEW YORK, NY

KIND OF BUSINESS
HOSPITAL

EXACT TITLE OF DUTY OR POSITION (Civilian Official Service, civilian grade. Give present and former position if change occurred during past year)
MEDICAL INTERN

MOS, PRESENT POSITION	NO. EMPLOYEES SUPERVISED (Present position)	MOS, FORMER POSITION
3		

BRIEF DESCRIPTION OF DUTIES AND RESPONSIBILITIES, INDICATE SPECIAL SKILLS OR LICENSES IN EFFECT (Bar Membership, CPA, Denomination if a member of the Chaplain Corps, Medical or Dental Board Certification, Merchant Marine, Professional Engineer or Engineer-in-training, Registered Architect or Architect-in-training, etc.)

① HAVE PERFORMED USUAL DUTIES OF PHYSICIAN AND MEDICAL INTERN; HAVE SPENT 2 MONTHS ELECTIVE TIME IN CLINICAL ENDOCRINOLOGY

② SINCE LAST REPORT HAVE:
(a) RETURNED TO PROF. MIRSKY'S LAB AT THE ROCKEFELLER UNIVERSITY FOR A 10 WEEK ELECTIVE IN WINTER '69 WHERE STUDIED CELLULAR ASPECTS OF BRAIN FUNCTION IN OLD VS YOUNG ANIMALS
(b) RESULTS OF EARLIER WORK PUBLISHED IN DECEMBER '69 (EXP. OF GEN. PHYS.) 51: 650-72; AND IN '69 THE CIRCULATION OF CELL ACTIVITIES DURING EXPOSURE TO COLD (PHYSIOLOGIST) 12: 174 IN '69 AM. J. PHYSIOL. (PSYCH)

15. CIVIC RESPONSIBILITIES, COMMUNITY ACTIVITIES
NONE

16. RESERVE UNIT OF WHICH A MEMBER	17. BILLET ASSIGNED AND MONTHS IN THIS BILLET	18. COMMAND HOLDING YOUR SERVICE RECORD
NONE	NONE	THIRD NAVAL DISTRICT
19. ACDUTRA DURING LAST FISCAL YEAR ACTIVITY: NONE	DUTIES:	DATES:

20. SIGNIFICANT NAVAL SKILLS AND QUALIFICATIONS (OOD (U)/type ship; Qualified in Submarines; Ship Salvage Diving Officer; EOD; UDT; Parachutist, etc.)
NONE

21. SIGNIFICANT NAVAL AVIATION EXPERIENCE PILOT/NFO

MODEL	HOURS	C/LS	PC DESIG	YR. FLOWN
NONE				

TOTAL PLT HRS	TOTAL JET HRS	PLT HRS LAST 5 YRS	TOTAL C/LS
DATE OF DESIGNATION			
RTA		NFO/TYPE	

CIVILIAN FLYING HRS. (Last 12 Mos.)

S.E. PROP	M.E. PROP	JET	HELO
NONE	NONE	NONE	NONE

CERTIFIED TO BE CORRECT AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF

(Signature) Jeffrey Robert Foster

DATE OF THIS REPORT
3 OCTOBER 1970

QUALIFICATIONS DATA SUBJECT TO CONFIRMATION BY COMPETENT AUTHORITY WHEN REQUIRED

CHIEF OF NAVAL PERSONNEL (Pers-B22)
COPY 2

SIGN ALL COPIES, REMOVE CARBONS, THEN RETURN COPY 1 TO BUPERS. RETAIN COPY 4 FOR YOUR PERSONAL FILE

102a

5/0/50
(Date)

From: JEFFREY ROBERT FOSTER 710059 1915
(Name in full) (Service no. & designator)

90 EAST END AVE, N.Y., N.Y. 10028
(Address)

To: Chief of Naval Personnel (Pers B623)

Subj: Appointment in the Medical Corps, Naval Reserve

1. Application is hereby submitted for appointment in the Medical Corps, Naval Reserve.

2. If I do not apply or if I am not matched to the Navy for internship, it is requested that I be given an appointment for inactive duty while completing one year of civilian internship.

3. I (DO) (DO NOT) desire an internship in the Navy (strike out "do" or "do not" as appropriate).

4. In the interest of bringing my records up to date, the following information is furnished:

Marital status: MARRIED

Ages and sex of children: MALE INFANT — AGE: 10 DAYS OLD

Personal information I would like to have considered in regards to my intern assignment and/or other assignments subsequent to internship:

I WOULD PREFER ASSIGNMENT TO A LAND-BASED HOSPITAL (NOT SHIPBOARD) IN ENGLAND, EUROPE OR THE U.S.A. THAT WOULD INVOLVE ME IN THE CLINICAL PRACTICE AND/OR RELATED RESEARCH OF INTERNAL MEDICINE.

Jeffrey R. Foster
(Signature)

Raleigh Files Form NAVPERS 1336/1

NAVPERS 1210/2 (REV. 3-69)

INACTIVE DUTY RESERVE OFFICER

103a

NOTICE → By [illegible] through 12 have been prepared [illegible] check them for accuracy, make [illegible] and initial the [illegible]

1	BRANCH	5	6 RANK	6 FILE NUMBER
IF "X" APPEARS IN THIS BOX YOUR [illegible] RECORD IS HELD AT NRMC	USNR-R	[illegible]	[illegible] AUG 66	71 30 34

7. PRIMARY DEPENDENTS (See Instruction 3b)

WIFE NO CHILD

8. SECONDARY DEPENDENTS (See Instruction 3c)

NO SECONDARY DEPENDENTS

9. SELECTIVE SERVICE NUMBER

30-10-42-1710

10. SOCIAL SECURITY NUMBER

070 34 4047

ENS JEFFREY ROBERT FOSTER
80 EAST END AVE APT 6A
NEW YORK, NY 10028
0372015

← RETURN ENCLOSED CARD IF ADDRESS WRONG

11. ACTIVE MILITARY SERVICE (Include enlisted and service with United States and Allied Forces. Do not include Active Duty for Training.)

WORLD WAR II (7 Dec 41 to 2 Sept 45)	KOREAN EMERGENCY (25 Jun 50 to 31 Jun 55)	RECALLED OR EXTENDED FOR BERLIN EMERGENCY (1961)	OTHER ACTIVE DUTY (Specify Dates)
NO	NO	NO	NO

12. FOREIGN LANGUAGE PROFICIENCY (See instruction 3d Record proficiency as 1, 2, 3 or X)

NONE

LANG:	PRO:	LANG:	PRO:	LANG:	PRO:

13. COLLEGE, UNIVERSITY, PROFESSIONAL OR TECHNICAL SCHOOL (Name and location)

	ATTENDED FROM	ATTENDED TO	SEM HOUR CREDITS	DEGREE TITLE	DEGREE DATE	MAJOR FIELD OF STUDY	SPECIALIZATION WITHIN MAJOR
NORTHWESTERN U, EVANSTON, ILL.	SEPT 1962	JUNE 1966	180	BA	JUNE 1966	POLITICAL SCIENCE	INTERNATL. RELAT.
COLUMBIA U., NEW YORK, N.Y.	JUNE 1966	SEPT 1969	66	NONE		PRE-MEDICAL	BIOLOGY, CHEMISTRY
NEW YORK MEDICAL COLLEGE, NEW YORK, N.Y.	SEPT 1969	PRESENT 3RD YEAR	NONE			MEDICINE	NEUROPSYCHIAT.

14. NAME AND ADDRESS OF EMPLOYER (If Federal Government, include unit or agency)

NONE

KIND OF BUSINESS

EXACT TITLE OF YOUR POSITION (If Civil Service, include grade. Give present and former position if change occurred during past year)

(4TH YEAR MEDICAL STUDENT)

MOS PRESENT POSITION (3½)

NO. EMPLOYEES SUPERVISED (Present position)

MOS FORMER POSITION

BRIEF DESCRIPTION OF DUTIES AND RESPONSIBILITIES. INDICATE SPECIAL SKILLS OR LICENSES IN EFFECT (Bar Membership, CPA, Denomination if a member of the Chaplain Corps, Medical or Dental Board Certification, Merchant Marine, Professional Engineer or Engineer-in-training, Registered Architect or Architect-in-training, etc.)

I HAVE PERFORMED ROUTINE DUTIES & FUNCTIONS OF ALL FOURTH YEAR MEDICAL STUDENTS. IN ADDITION, I AM PRESENTLY INVOLVED IN A COLLABORATIVE PILOT RESEARCH STUDY WITH DR. GENDEL WHO HEADS THE CYTOGENETICS LABORATORY. AT PRESENT WE ARE DOING CHROMOSOMAL STUDIES (KARYOTYPES) OF ALL PATIENTS ADMITTED TO OUR PSYCHIATRIC WARDS — WITH COMPREHENSIVE CORRELATIONS. REPORT TO FOLLOW.

15. CIVIC RESPONSIBILITIES, COMMUNITY ACTIVITIES SINCE INITIAL COMMISSION

NONE

16. RESERVE UNIT OF WHICH A MEMBER

NONE

17. BILLET ASSIGNED AND MONTHS IN THIS BILLET

NONE

DUTIES

18. COMMAND HOLDING YOUR SERVICE RECORD

THIRD NAVAL DISTRICT

DATES

19. ACDUTRA DURING FISCAL YEAR

ACTIVITY: NONE

20. SIGNIFICANT NAVAL SKILLS AND QUALIFICATIONS (OOD (Type ship; Qualified in Submarine; Ship Salvage Diving Officer; EOD; UDT; Parachutist, etc.)

NONE

21. SIGNIFICANT NAVAL AVIATION EXPERIENCE PILOT/NFO

MODEL	HOURS	C/LS	PC DESIG	YR FLOWN
NONE				

TOTAL PLT HRS	TOTAL JET HRS	PLT HRS LAST 5 YRS	TOTAL C/LS

DATE OF DESIGNATION

HTA	NFO/TYPE

CIVILIAN FLYING HRS (Last 12 Mos.)

S.E. PROP	M.E. PROP	JET	HELO
NONE	NONE	NONE	NONE

CERTIFIED TO BE COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF

(Signature) Jeffrey Robert Foster

DATE OF THIS REPORT

14 SEPTEMBER 1969

QUALIFICATIONS DATA SUBJECT TO CONFIRMATION BY COMPETENT AUTHORITY WHEN REQUIRED

CHIEF OF NAVAL PERSONNEL (PERS 2221)
COPY 2

FOLD →

SIGN ALL COPIES, REMOVE CARBONS, THEN RETURN COPIES 1 AND 3 TO NRMC. RETAIN COPY 4 FOR YOUR PERSONAL FILE

ANNUAL QUALIFICATIONS QUESTIONNAIRE
INACTIVE DUTY RESERVE OFFICER

NAVPERS 1210-2 (Rev 3-68) **104a** **S-3**

NOTICE — Item information on this form has been prepared by a computer from records. If any item is incorrect, make corrections; if items are blank, complete if applicable.

1	2 BRANCH CLASS	3 DESIGNATOR	4 DATE OF BIRTH	5 DATE OF RANK	6 FILE NUMBER
IF "X" APPEARS IN THIS BOX, YOUR SERVICE RECORD IS HELD AT NPMC	USNR-R	1915	24 NOV 42	01 AUG 66	71003

7 PRIMARY DEPENDENTS *(See Instruction 3b)* ~~NO PRIMARY DEPENDENTS~~ MARIE ANN FOSTER (WIFE) (MARRIED 13 AUG 66 IN NEW JERSEY)

8 SECONDARY DEPENDENTS *(See Instruction 3c)* NO SECONDARY DEPENDENTS

9 SELECTIVE SERVICE NUMBER: 30-10-42-1710

10 SOCIAL SECURITY NUMBER: 070 34 4047

ENS JEFFREY ROBERT FOSTER
11 ODDEN RD
SCARSDALE NY 10583
0372015

RETURN ENCLOSED CARD IF ADDRESS WRONG

11 ACTIVE MILITARY SERVICE *(Include enlisted and service with United States and Allied Forces. Do not include Active Duty for Training.)*

WORLD WAR II (7 Dec 41 to 25 Sep 45)	KOREAN EMERGENCY (25 Jun 50 to 31 Jan 55)	RECALLED OR EXTENDED FOR BERLIN EMERGENCY (1961)	OTHER ACTIVE DUTY *(Specify Dates)*
NO	NO	NO	NO

12 FOREIGN LANGUAGE ABILITY

LANGUAGE	PROFICIENCY (Indicate L, I, T, or X)
NONE	

(L) LINGUIST - Speaks fluently and translates competently into the written language from English.
(I) INTERPRETER - Speaks fluently; can converse and serve as interpreter.
(T) TRANSLATOR - Translates competently from the written language into English and may be able to translate into the written language.
(X) SOME KNOWLEDGE - Can use routine expressions in conversation or read simple text but if language is French, German or Spanish, must have speaking and reading ability.

13 COLLEGE, UNIVERSITY, PROFESSIONAL OR TECHNICAL SCHOOL *(Name and location)*

ATTENDED FROM	ATTENDED TO	SEM HOUR CREDITS	DEGREE TITLE	DEGREE DATE	MAJOR FIELD OF STUDY	SPECIALIZATION WITHIN MAJOR
[illegible]	[illegible]	180	BA	[illegible]	POLITICAL SCIENCE	INTERNATIONAL LAW
[illegible]	[illegible]	[illegible]	NONE		PRE-MEDICAL	BIOLOGY, CHEMISTRY, MATH
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	MEDICINE	PSYCHIATRY

14 RESERVE UNIT OR WHICH A MEMBER: NONE

15 BILLET ASSIGNED AND MONTHS ON THIS BILLET: NONE

16 COMMAND HOLDING YOUR SERVICE RECORD: THIRD NAVAL DISTRICT

17 ACCEPTED DURING FISCAL YEAR ACTIVITY: NONE

DUTIES: [illegible]

DATES: [illegible]

18 NAME AND ADDRESS OF EMPLOYER *(If Federal Government, include title of agency.)*: ALBERT EINSTEIN COLLEGE OF MEDICINE, BRONX, N.Y.

KIND OF BUSINESS: MEDICAL RESEARCH

EXACT TITLE OF YOUR POSITION *(If Civil Service include Rating)*
(Give present and former position if change occurred during past year.): RESEARCH ASSOCIATE, GRADUATE STUDENT (PROBABLY BEST DESCRIBED AS "RESEARCH ASSISTANT") [illegible] PRESENTLY ENGAGED IN [illegible] BIOCHEMISTRY OF AGING. [illegible] BIOCHEMISTRY LABORATORY [illegible]

MOS PRESENT POSITION	MOS FORMER POSITION	NO. EMPLOYEES SUPERVISED *(Present position)*	CHECK ANNUAL SALARY *(Present position)*	
3		NONE		UNDER $8500
				$8500 - $12000
				$12000 - $18000
				OVER $18000

BRIEF DESCRIPTION OF DUTIES AND RESPONSIBILITIES *(Indicate field of specialization; if an apprentice, indicate)*

(A) ASSISTED DR. [illegible]'S GRADUATE STUDENT IN HIS DOCTORAL RESEARCH PROJECT ON AGING; THESE BIOCHEMICAL STUDIES INVESTIGATED POSSIBLE AGE-RELATED DRUG ACTIVITY DEFICITS IN THE MOUSE LIVER CELLS.

(B) DESIGNED & EXECUTED A SCREENING PROGRAM TO ASSAY THE PRESENCE OR ABSENCE OF DISEASE IN THE OLD MOUSE (AGE WHICH WERE STUDIED); THESE DATA (PRIMARILY NUMEROUS DETERMINATIONS ON THE FORMED BODY - BLOOD CHEMISTRY) WILL HELP RELATE THE POSSIBLE EFFECTS OF DISEASE (IN ADDITION TO THOSE OF AGE DIFFERENCES ONLY) ON THE EXPERIMENTAL RESULTS OF THE CELLULAR GENETIC STUDIES. PRESENT PLANS ARE TO PUBLISH (AS CO-AUTHOR) THE CALCULATED RESULTS OF THIS SCREENING PROGRAM.

19 CIVIC RESPONSIBILITIES, COMMUNITY ACTIVITIES, SPECIAL SKILLS OR LICENSES IN EFFECT *(Professional Engineer, Board Certification, Merchant Marine, C.P.A., Bar Membership, etc.)* WHICH COULD ENHANCE YOUR PROMOTION OR MOBILIZATION POTENTIAL

NONE

20 SIGNIFICANT NAVAL AVIATION EXPERIENCE PILOT/NFO

MODEL	HOURS	C/LS	PC DESIG	YR FLOWN
NONE				

TOTAL PLT HRS	TOTAL JET HRS	PLT HRS LAST 5 YRS	TOTAL C/LS

DATE OF DESIGNATION
RTA
NFO/TYPE

CIVILIAN FLYING HRS *(Last 12 Mos.)*

S.E. PROP	M.E. PROP	JET	HELO
NONE	NONE	NONE	NONE

CERTIFIED TO BE COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF

(Signature) Jeffrey R. Foster

DATE OF THIS REPORT: 25 SEPTEMBER

CHIEF OF NAVAL PERSONNEL (PERS B1221)
COPY 2

SIGN, BUT MOVE CARBONS, THEN RETURN COPIES
RETAIN WORKSHEET (COPY 4) FOR YOUR PERSONAL

NAVPERS 1210/2 (2-67)
(Formerly NAVPERS 315)

ANNUAL QUALIFICATIONS QUESTIONNAIRE
(NAVPERS 1210/2)

105a

NOTICE —>

1. [ ] IF "X" APPEARS IN THIS BOX, YOUR SERVICE RECORD IS HELD AT NPRC

USNR-R | 1515 | 24 | 040560 | 9. [illegible]

7. If mobilization should occur, you may expect orders to the following assignment. Time shown is the approximate time of ultimate duty station. If blank you have not been selected or a previous selection is no longer effective.

ACTIVITY NAME | BILLET TITLE | TIME AFTER M-DAY

8. SELECTIVE SERVICE NUMBER
30-10-42-1710

9. SOCIAL SECURITY NUMBER
070 34 4047

ENS JEFFREY ROBERT FOSTER
11 OGDEN RD
SCARSDALE N Y 10583
0375015

RETURN ENCLOSED CARD IF ADDRESS WRONG

10. PRIMARY DEPENDENTS (See Instruction 3c)
NO PRIMARY DEPENDENTS

11. SECONDARY DEPENDENTS (See Instruction 3d)
NO SECONDARY DEPENDENTS

12. ACTIVE MILITARY SERVICE (Include enlisted and service with United States and Allied Forces. Do not include Active Duty for Training.)

WORLD WAR II (7 Dec 41 to 2 Sep 45)	KOREAN EMERGENCY (25 Jun 50 to 31 Jan 55)	RECALLED OR EXTENDED FOR BERLIN EMERGENCY (1961)	OTHER ACTIVE DUTY (Specify Dates)
NO	NO	NO	NO

13. FOREIGN LANGUAGE ABILITY

LANGUAGE	PROFICIENCY (Indicate L, I, T, or X)
NONE	

(L) LINGUIST - Speaks fluently and translates competently into the written language from Engli
(I) INTERPRETER - Speaks fluently; can converse and serve as interpreter.
(T) TRANSLATOR - Translates competently from the written language into English and may be able translate into the written language.
(X) SOME KNOWLEDGE - Can use routine expressions in conversation or read simple text but if language French, German or Spanish, must have speaking and reading ability.

14. RESERVE UNIT OF WHICH A MEMBER: NONE

15. BILLET ASSIGNED AND MONTHS IN THIS BILLET: NONE

16. COMMAND HOLDING YOUR RECORDS: THIRD NAVAL DISTRICT

17. ACTIVITY DURING PAST FISCAL YEAR: NONE

DEPARTMENT OR DIVISION:

DATES:

18. NAME AND ADDRESS OF EMPLOYER (If Federal Government, include title of agency)
NATIONAL INSTITUTE OF NEURAL HEALTH (MARYLAND)

KIND OF BUSINESS: MEDICAL RESEARCH

EXACT TITLE OF YOUR POSITION (If Civil Service Include Rating)
N.I.H. SUMMER RESEARCH TRAINEESHIP
ALBERT EINSTEIN MEDICAL COLLEGE
DEPT OF PSYCHIATRY - BRAIN RESEARCH LABORATORIES

NO. EMPLOYEES SUPERVISED: NONE

MOST PRESENT POSITION: 3

CHECK ANNUAL SALARY

	UNDER $8500
	$8500 - $12000
	$12000 - $18000
	OVER $18000

BRIEF DESCRIPTION OF DUTIES AND RESPONSIBILITIES (Indicate field of specialization, if an apprentice, indicate)
I ASSISTED IN ONGOING MICROELECTRODE STUDIES OF INFORMATION PROCESSING IN THE BRAIN OF A CHRONICA IMPLANTED, UNRESTRAINED CAT. MY ACTIVITIES INCLUDED: (1) FABRICATION, TESTING AND DEVELOPMENT OF MICROELECTRODES; (2) BEHAVIORAL TRAINING (CONDITIONING) OF IMPLANTED ANIMAL; (3) COLLECTION A ANALYSES OF ELECTROPHYSIOLOGICAL (COMPUTER-GENERATED) AND BEHAVIORAL DATA FROM THE PERFORMING & ANIMAL.

I ALSO INITIATED MY OWN EXPERIMENTS ON NEURONAL FIRING RATE PATTERNS IN THIS PERFORM AND RESTING ANIMAL.

19. CIVIC RESPONSIBILITIES COMMUNITY ACTIVITIES, SPECIAL SKILLS OR LICENSES IN EFFECT (Professional Engineer, Board Certification, Merchan Marine, CPA, Bar Membership, etc.) WHICH COULD ENHANCE YOUR PROMOTION OR MOBILIZATION POTENTIAL.

NONE

20. SIGNIFICANT FOREIGN RESIDENCE OR TRAVEL (Indicate country and inclusive dates).
NONE

21. COLLEGE, UNIVERSITY, PROFESSIONAL OR TECHNICAL SCHOOL (Name and location)

ATTENDED FROM	ATTENDED TO	SEMESTER HOUR CREDITS	DEGREE TITLE	DEGREE DATE	MAJOR FIELD OF STUDY	SPECIALIZATION WITHIN MAJOR
NORTHWESTERN U., EVANSTON, ILL.	SEPT [illegible]	JUNE [illegible]	180	BA	POLITICAL SCIENCE	INTERNATIONAL RELATIO
COLUMBIA U., NEW YORK, N.Y.	JUNE [illegible]	[illegible]	66	NONE	PRE-MEDICAL	BIOLOGY, CHEMISTRY, PHY
NEW YORK MEDICAL COLLEGE, NEW YORK, N.Y.	SEPT 1964	PRESENT	1ST YEAR	NONE	MEDICINE	NEUROPSYCHIATRY

22. NAVAL AVIATION EXPERIENCE (Past 12 Mos.)

AIRCRAFT MODEL	NONE	
CREW POSITION		
HOURS		
QUAL. DATE		

PLANE COMMANDER QUALIFICATION (Last date & model): NONE

NFO QUALIFICATIONS/DATE (NAV, BN, RIO, etc.): NONE

CIVILIAN FLYING HRS. (Last 5 years)

S.E. PROP	M.E. PROP	JET	RECIP
NONE	NONE	NONE	NONE

DATE OF THIS REPORT: 29 Aug 1967

CERTIFIED TO BE COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF

(Signature) Jeffrey Robert Foster

CHIEF OF BUREAU OF PERSONNEL (PERS 122)

SIGN, REMOVE CARBONS, THEN RETURN TO TOP

LC:lm
74-2255

AFFIDAVIT OF ASSISTANT UNITED STATES ATTORNEY, LOUIS G. CORSI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES ex rel JEFFREY FOSTER,

Petitioner,

-v-

JAMES R. SCHLESINGER, Secretary of Defense, JOHN W. WARNER, Secretary of the Navy and ADMIRAL JOHN M. SHAFFER, Commandant Third Naval District, New York

Respondents.

AFFIDAVIT IN OPPOSITION

Civ.

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

LOUIS G. CORSI, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, the attorney for the Respondents in this action. As such, I am in charge of the defense of this action and I make this affidavit in opposition to the Petition of Jeffrey R. Foster for a Writ of Habeas Corpus, dated July 13, 1974.

2. As Lieutenant Foster has stated in his petition, he is an officer in the United States Navy Reserve, Medical Corp, ("Navy") having received his commission through enrollment in the Ensign 1915 Program. This affidavit, and the exhibits annexed hereto, are presented to this Court to clarify the terms of the Ensign 1915 Program and the Navy Plan, which Lieutenant Foster joined in 1971, and the

concommitant obligations he incurred by joining these programs.

3. Upon information and belief,* the Ensign 1915 Program is a voluntary Naval program available to medical students which permits them to join the Naval Reserve as commissioned officers in the rank of ensign. By enrolling in this program, an individual is given a deferment from active service during medical school and one year of internship. The individual, in turn, obligates himself to serve two years on active duty in a Naval hospital.

4. Upon information and belief,** the Berry Plan is a Department of Defense program available to medical students and doctors which permits, inter alia, a deferment from active duty during residency. It is seperate from the Navy's Ensign 1915 Program, and requires a seperate application for enrollment.

5. As stated in his petition, Lieutenant Foster enrolled in the Ensign 1915 in or about September 1966 and received a deferment during medical school and his internship.

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*The source of this information is from the Navy publication Instruction [illegible] of 1 May 1972, Chapter 5, "Medical Corp Programs". Because of the press of time, I have not been able to secure a copy to annex hereto, but will supply this Court and counsel for petitioner with a copy as soon as it becomes available.

**The source of this information is Department of Defense Instruction [illegible] of 16 September 1965, "Armed Forces Physicians' Appointment and Residency Program". I will supply this Court and counsel for petitioner with a copy of this document as soon as it becomes available.

He thereby incurred an obligation to serve two years on active duty. In 1971, he submitted a new and separate application to enroll in the Berry Plan. (A copy of this application is annexed hereto as Exhibit A.)* His application was granted and he received an additional deferment during his residency - from 1971 through July 1974, the anticipated date of completion. (See Exhibit A)

6. For each year from 1967 through 1972, Lieutenant Foster completed an "annual qualification questionnaire" which had been sent to him by the Navy. (Exhibits B through G annexed hereto.) By these questionnaires, the Navy inquires into the present status of an individual's course of study during his period of deferment. And, upon information and belief, the completed questionnaire is used to determine if the individual is entitled to continued deferment under either the Ensign 1915 Program or the Berry Plan. Lieutenant Foster's Officer Record does not contain a completed questionnaire for 1973, and the Navy is presently attempting to ascertain whether it, in fact, sent him a copy of the questionnaire for 1973.

7. In ~~July 1973~~ June 1974 one year earlier than originally anticipated, Lieutenant Foster completed his residency. (Petition, ¶4, p.2.) As stated above, upon completion of his studies and residency, Lieutenant Foster was obligated to serve two years on active duty. It is the Navy's position

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* This application as well as the remaining exhibits annexed hereto, are contained in Lieutenant Foster's Officer Record, a certified copy of which is submitted herewith under separate cover.

that Lieutenant Foster is still under this obligation, despite his request to resign in September 1973 and his application for discharge in March 1974 as a conscientious objector. As fully developed in the memorandum of law submitted herewith, Lieutenant Foster's conscientious objection crystallized and became fixed prior to the time he enrolled in the Ensign 1915 Program. Under applicable Navy regulations, he is not therefore, entitled to a discharge. The conclusion of the Chief of Naval Personnel in this regard has "a basis in fact" in the record herein and, it is respectfully submitted, should be upheld by this court.

/s/
LOUIS G. CORSI
Assistant United States
Attorney

Sworn to before me this
25 day of July, 1974.
/s/ Lynwood Hayes

110b

REQUEST FOR DELAY FOR RESIDENCY TRAINING

Form Approved
Budget Bureau No. 22-R014

Under the provisions of Section 511(d) of Title 10, United States Code, I request deferment of service to delay my active duty until completion of residency training after I and Professional Service have been properly executed, to:

Director, Selective Service System, Attn: Health Professions Section, Washington, D.C. 20435

PART I - REQUEST FOR RESIDENCY TRAINING (To be completed by Physician Applicant)

DATE _____ (Day - Mo - Yr)

I HEREBY REQUEST THAT MY ACTIVE MILITARY SERVICE BE POSTPONED FOR COMPLETION OF TRAINING IN THE SPECIALTY OF _____ (the ultimate specialty for which training is desired) FOR A COMPLETE TRAINING PROGRAM TOTAL OF _____ YEARS, BROKEN DOWN, WHERE APPROPRIATE, AS FOLLOWS:

PRE-SPECIALTY (Yrs)	SPECIALTY (Yrs)	SUB-SPECIALTY (Yrs)	TOTAL (Yrs)

I ANTICIPATE MY RESIDENCY TRAINING, AS LISTED ABOVE, WILL TERMINATE (Mo and Yr) _____. IN THE EVENT I ELECT TO CHANGE SPECIALTY, TRAINING HOSPITAL, OR TERMINATE MY RESIDENCY TRAINING FOR ANY REASON, I WILL IMMEDIATELY NOTIFY THE ABOVE CITED ADDRESSEE.

NAME OF PHYSICIAN (Must be typed) (First-Middle-Last)-(Prefix-Suffix)

DATE OF GRADUATION _____ (Day-Mo-Yr)

☐ MEDICAL SCHOOL ☐ SCHOOL OF OSTEOPATHY

HOME ADDRESS OF PHYSICIAN

SELECTIVE SERVICE NO.				SOCIAL SECURITY NO.	
				0	

CITY, STATE, ZIP CODE

SIGNATURE OF PHYSICIAN

PART II - HOSPITAL (To be completed by chief medical officer of approved hospital or his representative)

PHYSICIANS ARE APPROVED FOR THE MINIMUM NUMBER OF YEARS REQUIRED FOR THE TRAINING PROGRAM OF THE HOSPITAL PROVIDING THE TRAINING, AS INDICATED IN THE CURRENT DIRECTORY OF APPROVED INTERNSHIPS AND RESIDENCIES" OR APPROPRIATE FOR ENABLE OSTEOPATHIC PHYSICIAN. IF THE LENGTH OF THE PROGRAM INDICATED EXCEEDS THIS, IT MUST BE EXPLAINED ON THE REVERSE SIDE OF THIS FORM TO AVOID DELAYS IN FURTHER PROCESSING. THE TRAINING PROVIDED MUST MEET THE REQUIREMENTS FOR SPECIALTY BOARD CERTIFICATION.

THE ABOVE NAMED PHYSICIAN HAS BEEN ACCEPTED BY THIS HOSPITAL FOR RESIDENCY TRAINING IN _____ (Name of specialty). THIS TRAINING WILL BEGIN _____ (Day-Mo-Yr) AND TERMINATE _____ (Day-Mo-Yr).

THE LENGTH OF THE APPROVED TRAINING TO BE SPONSORED BY THIS HOSPITAL IS _____ YEARS. ANTICIPATED DATE APPLICANT WILL MEET MINIMUM FORMAL RESIDENCY TRAINING REQUIREMENTS ESTABLISHED BY THE BOARD FOR CERTIFICATION IN SPECIALTY SPECIFIED ON LINE 2 PART I IS _____ (Mo-Yr). (Omit if all training is not to be sponsored by hospital sponsor and the first year)

IT IS THE UNDERSTANDING OF THIS HOSPITAL THAT THE ACTIVE MILITARY SERVICE OF THE ABOVE NAMED PHYSICIAN WILL BE POSTPONED FOR THE PURPOSE OF PERMITTING HIM TO COMPLETE THIS RESIDENCY TRAINING WHICH IS ESSENTIAL TO THE ARMED FORCES. THIS IN NO WAY BINDS THE HOSPITAL FOR CONTINUED TRAINING SHOULD THE PHYSICIAN PROVE UNSATISFACTORY.

IN THE EVENT THE PHYSICIAN PROVES UNSATISFACTORY OR FOR ANY REASON DISCONTINUES TRAINING IN THE ABOVE SPECIALTY THIS HOSPITAL WILL NOTIFY THE ABOVE CITED ADDRESSEE.

IT IS FURTHER UNDERSTOOD THAT, AS A RESERVE OFFICER ON INACTIVE DUTY, THIS PHYSICIAN RECEIVES NEITHER PAY NOR ALLOWANCES FROM THE ARMED FORCES AND IS, THEREFORE, ELIGIBLE TO ACCEPT THE NORMAL STIPEND PAID RESIDENTS BY THIS INSTITUTION.

NAME OF HOSPITAL (Must be typed)

SIGNATURE OF HOSPITAL OFFICIAL

SIGNATURE AND TITLE OF ABOVE OFFICIAL

USNR-R | 1963 | 24 NOV 42 | 8 JUN 66

CIRCLE 1 FOR

8. SELECTIVE SERVICE NUMBER
20-10-42-1710

9. SOCIAL SECURITY NUMBER
070 34 4047

ENS JEFFREY ROBERT FOSTER
11 OGDEN RD
SCARSDALE N Y 10583
0375015

ENTER ENCLOSED CARD IF ADDRESS WRONG

10. PRIMARY DEPENDENTS (See Instruction 3c)
NO PRIMARY DEPENDENTS

11. SECONDARY DEPENDENTS (See Instruction 3d)
NO SECONDARY DEPENDENTS

12. ACTIVE MILITARY SERVICE (Include enlisted and service with United States and Allied Forces. Do not include Active Duty for Training.)

[ ] (1) WORLD WAR II (7 Dec 41 to 25 Dec 46)
[ ] (2) KOREA (27 June 50 to 31 Jan 55)
[ ] (3) RECALLED OR EXTENDED FOR BERLIN EMERGENCY (1961)
[ ] (4) OTHER ACTIVE DUTY (Specify Dates)

13. FOREIGN LANGUAGE AND AREA ABILITY

LANGUAGE	

(1) LINGUIST - Speaks fluently and translates competently into the written language from t
(2) INTERPRETER - Speaks fluently, can converse and serve as interpreter.
(3) TRANSLATOR - Translates competently from the written language into English and may be
(4) SOME KNOWLEDGE - Can use routine expressions in conversation or read simple text in a for
French, German or Spanish. Proficiency in reading ability.

14. DATE OF LAST PROMOTION
DATE

15. YEARS AND MONTHS IN THIS GRADE
2 YRS

16. YEARS HOLDING YOUR PRESENT DESIGNATION
2 YRS NAVAL DUTY

17. DUTY DURING PAST FISCAL YEAR (DEPARTMENT OR DIVISION)
NONE

DATES:

18. NAME AND ADDRESS OF EMPLOYER
NONE

19. TYPE OF BUSINESS
MEDICAL RESEARCH

20. TYPE OF WORK DONE DURING PAST FISCAL YEAR
MEDICAL RESEARCH
ANIMAL SURGERY
ANIMAL CARE

SUPERVISED	CHECK ANNUAL SALARY	
NONE	3	UNDER $
		$4000 - $
		$12000 -
		OVER $12

21. BRIEF DESCRIPTION OF DUTIES AND RESPONSIBILITIES (If Navy field of specialization, if an apprentice, indicate)
ASSISTED IN OPERATIVE PROCEDURES ON EXPERIMENTAL ANIMALS. PERFORMED CHRONIC EXPERIMENTS ON INNERVATION PROCESSES IN THE OPEN CHEST AND ENCEPHALON (BRAIN), INCLUDING ANESTHESIA, INTUBATION, TRACHEOTOMY, VENTILATION, TISSUE AND BONE DISSECTION, ISOLATION OF NERVES, MUSCLES, BLOOD VESSELS, ETC. ALSO PERFORMED ACUTE EXPERIMENTS ON ANESTHETIZED ANIMALS (DOGS, CATS, RABBITS, RATS, ETC.) INCLUDING ELECTROPHYSIOLOGICAL (BRAIN-GENERATED) AND BEHAVIORAL DATA FROM THE PERIPHERY OF THE ANIMAL.
I ALSO ENTERTAINED MY OWN EXPERIMENTS ON NEURONAL FIRING RATE PATTERNS IN THIS PREPARATION AND RESTRAINED ANIMAL.

22. CIVIC RESPONSIBILITIES, COMMUNITY ACTIVITIES, SPECIAL SKILLS OR LICENSES IN EFFECT (Professional Engineer, Board Certification, Notary Public, Member, CPA, Bar Membership, etc.) WHICH COULD ENHANCE YOUR PROMOTION OR MOBILIZATION POTENTIAL.
NONE

23. SIGNIFICANT FOREIGN RESIDENCE OR TRAVEL (Indicate country and indicate dates).
NONE

24. COLLEGE, UNIVERSITY, PROFESSIONAL OR TECHNICAL SCHOOL (Name and location)	ATTENDED FROM	ATTENDED TO	SEMESTER HOURS CREDITS	DEGREE TITLE	DEGREE DATE	MAJOR FIELD OF STUDY	SPECIALIZATION WITHIN MAJOR
[illegible]	[illegible]	[illegible]	162	BA	[illegible]	PSYCHOLOGY	[illegible]
[illegible]	[illegible]	[illegible]	66	MD		MEDICAL	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	NONE		MEDICINE	[illegible]

25. MILITARY AVIATION EXPERIENCE (Per 13 Mo.)

	FROM	TO
PILOT	NONE	
OBSERVER		
OTHER		

FLIGHT COMMANDER QUALIFICATION (Last Date Qualified)
NONE

TYPE OF AIRCRAFT (Navy Designation)
NONE

CIVILIAN FLYING HRS. (Last 3 Mos.)

SE. PROPELLER PROP	JET
NONE	NONE

8 [illegible] NUMBER
561-10-48-1710

10 SOCIAL SECURITY NUMBER
070 34 4047

ENS JEFFREY ROBERT FOSTER
11 COOPER RD
SCARSDALE NY 10583
0372015

RETURN ENCLOSE CARD IF ADDRESS WRONG

11 ACTIVE MILITARY SERVICE (Include enlisted and service with United States and Allied Forces. Do not include Active Duty for Training.)

[ ] WORLD WAR II (7 Dec 41 to 2 Sep 45)	[10] KOREAN EMERGENCY (25 Jun 50 to 31 Jan 55)	[ ] RECALLED OR EXTENDED FOR BERLIN EMERGENCY (1961)	[10] OTHER ACTIVE DUTY (Specify Date)

12 FOREIGN LANGUAGE ABILITY

LANGUAGE	PROFICIENCY (Indicate 1, 2, 3, or X)

(L) LINGUIST - Speaks fluently and translates competently into the written language from e
(I) INTERPRETER - Speaks fluently, can converse and serve as interpreter.
(T) TRANSLATOR - Translates competently from the written language into English and ma to translate into the written language.
(X) SOME KNOWLEDGE - Can use routine expressions in conversation and read simple text (For French, German or Spanish, must have studied [illegible])

13 COLLEGE, UNIVERSITY OR PROFESSIONAL OR TECHNICAL SCHOOL ATTENDED

FROM	TO	SEM HOUR CREDITS	DEGREE TITLE	DEGREE DATE	MAJOR FIELD OF STUDY	SPECIALIZATION
		120				
		140				

14 [illegible] 15 BILLET [illegible] AND MONTHS IN THIS BILLET 16 [illegible]

17 [illegible] DUTIES DATES

18 [illegible] (Last Government or Military Agency) KIND OF RESIGN

19 [illegible] PRESENT POSITION | NO. OF LOPES SUPERVISED (Direct or Full Time) | GROSS ANNUAL SALARY (Present position) | BASIC [illegible] | OVERSEAS

BRIEF DESCRIPTION OF DUTIES AND RESPONSIBILITIES (Indicate field of specialization if an appropriate one indicate)

a) [illegible] INVOLVED DIRECT OPERATIONAL RESEARCH EFFORT ON ASW TACTICS ET
[illegible] DEVELOPMENT OF ANALYTICAL TECHNIQUES FOR THE ASSESSMENT OF ASW EFFECTIVENESS
b) DESIGNED, EXECUTED A SIMULATION PROGRAM TO ASSAY THE PRESENCE OR ABSENCE OF LEUKEMIA IN THE [illegible] WHICH UNDER WERE STUDIED. BASIC DATA CONSISTED NUMEROUS DETERMINATIONS ON THE [illegible] AND [illegible] TO ESTABLISH AND RELATE THE BIOASSAY LEVELS OF DISEASE CHARACTERISTIC TO THOSE [illegible] ON THE ENVIRONMENTAL LEVELS OF THE GENERAL CONTROL STATES. [illegible] [illegible] AND PUBLISHED (AS CO-AUTHOR) THE GRATIFYING RESULTS OF THIS [illegible] PROGRAM.

[illegible] SPECIAL QUALIFICATIONS, QUALIFICATIONS, SPECIAL SKILLS OR LICENSES IN EFFECT (Professional Engineer, Board Certification, [illegible] WHICH COULD ENHANCE YOUR PROMOTION OR MOBILIZATION POTENTIAL

NONE

20 SIGNIFICANT NAVAL AVIATION EXPERIENCE PILOT/NFO

MODEL	HOURS	C/LS	PC DESIG	R FLOWN	TOTAL PLT HRS	TOTAL JET HRS	PLT HRS LAST 6 MTHS	TOTAL C/LS	CIVILIAN FLYING HRS (Last 12 [illegible]) S E PROP	M E PROP	JET
NONE									NONE	NONE	NONE
					DATE OF DESIGNATION						
					USN		USN Type				

[illegible] TRUE, COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF DATE OF THIS REPORT

NO CHILD

NO SECONDARY DEPENDENTS

ENS JEFFREY ROBERT FOSTER
80 EAST END AVE APT 6A
NEW YORK, NY 10028
0372015

RETURN ENCLOSED CARD IF ADDRESS WRONG

9. 50-10-42-1710

10. SOCIAL SECURITY NUMBER
220 24 4047

11. ACTIVE MILITARY SERVICE (Include enlisted and service with United States and Allied Forces. Do not include Active Duty for Training.)

WORLD WAR II	KOREAN EMERGENCY	RECALLED OR EXTENDED FOR BERLIN EMERGENCY (1961)	OTHER ACTIVE DUTY (Specify Dates)
NO (7 Dec 41 to 2 Sept 45)	NO (25 Jun 50 to 31 Jun 55)	NO	NO

12. FOREIGN LANGUAGE PROFICIENCY (See instruction 3d. Record proficiency as 1, 2, 3 or X)

LANG:	PRO:	LANG:	PRO:	LANG	PRO:
				NONE	

13. COLLEGE, UNIVERSITY, PROFESSIONAL OR TECHNICAL SCHOOL (Name and location)

ATTENDED FROM	ATTENDED TO	SEMI-HOUR CREDITS	DEGREE TITLE	DEGREE DATE	MAJOR FIELD OF STUDY	SPECIALTY
[illegible]	[illegible]	150	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	66	NONE		[illegible]	[illegible]

NONE

14. EXACT TITLE OF YOUR POSITION (If Civil Service, include grade. Give present and former position if change occurred during past year)
(CLINICAL CLERKSHIP STUDENT)

NOS. PER WEEK
(40)

KIND OF BUSINESS

NO. EMPLOYEES SUPERVISED (Present position)

BRIEF DESCRIPTION OF DUTIES AND RESPONSIBILITIES (Hospital Corps, Medical or Dental Intern, Certification, Merchant Marine, Post Graduate Course or Degree in Medicine, Registered Architect or Professional Engineer, etc.)

I HAVE PERFORMED ROUTINE DUTIES + FUNCTIONS OF ALL FOURTH YEAR MEDICAL STUDENTS. IN ADDITION I AM PRESENTLY INVOLVED IN A COLLABORATIVE HEART RESEARCH STUDY WITH DR. GENDEL WHO HEADS THE CYTOGENETICS LABORATORY AT MONTEFIORE. WE ARE DOING CHROMOSOMAL STUDIES (KARYOTYPES) OF ALL PATIENTS ADMITTED TO OUR RESEARCH WARDS — WITH CONSIDERABLE COMMITMENT ON MY PART TO FOLLOW

15. CIVIC RESPONSIBILITIES, COMMUNITY ACTIVITIES SINCE INITIAL COMMISSION.

NONE

16. RESERVE UNIT OF WHICH A MEMBER
NONE

17. BILLET ASSIGNED AND MONTHS IN THIS BILLET
NONE

18. COMMAND HOLDING YOUR SERVICE REC
UNITED NAVAL [illegible]

19. ACTIVE DUTY THIS FISCAL YEAR
FROM: NONE
TO:

DUTIES

DATES

20. SPECIAL QUALIFICATIONS AND QUALIFICATIONS (Aviator, Qualified in Submarines, Diving, Salvage, Deep Sea Diver, Explosives, Demolition, Underwater Swimmer, Parachutist, etc.)

NONE

21. AIR [illegible] (Complete for Aviation Officers Only) EXPERIENCE PILOT, NFO

MODEL	HOURS	C/S	PC DESIG	YR FLOWN	TOTAL PLT HRS	TOTAL JET HRS	PLT HRS LAST 5 YRS	TOTAL C/S
NONE								

DATE OF DESIGNATION

CIVILIAN FLYING HRS (Last 12 Mos.)

SE PROP	ME PROP	JET	
NONE	NONE	NONE	NONE

DATE AND RECEIPT TO THE [illegible]

DATE OF THIS REPORT

LTJG JEFFREY ROBERT FOSTER
80 EAST END AVE APT 6A
NEW YORK, NY 10028
0372015

30-10-40-1710

070 34 4047

NO SECONDARY DEPENDENTS

11. ACTIVE MILITARY SERVICE (Include enlisted and service with Unit of States and Allied Forces. Do not include Active Duty for Training)

- [ ] KOREAN EMERGENCY (JAN 1950 TO JULY 1955)
- [ ] RECALLED OR EXTENDED FOR BERLIN EMERGENCY (1961)
- [ ] RECALLED OR EXTENDED FOR SOUTHEAST ASIA (1965)
- [ ] OTHER ACTIVE DUTY (Specify Dates)

10. FOREIGN LANGUAGE PROFICIENCY (See instruction 3 on Record for Entries as L, S, T or X) NONE

FROM	TO	SEM. HOUR CREDITS	DEGREE TITLE	DEGREE DATE	MAJOR FIELD OF STUDY

14. PRESENT CIVILIAN OCCUPATION: RESEARCH ASSOCIATE IN DETAIL

15. SPECIAL SKILLS

16. MILITARY OCCUPATIONAL SPECIALTY (Officer) (Enlisted) 1305

17. SKILLS OR SPECIFIC JOBS HELD (Type of Ship, CIC, Decontamination, Duties of Officer or Leading Petty Officer, Type of Aircraft Flying, etc.)

1) HAVE PERFORMED VERY PRELIMINARY RESEARCH ON MEDICAL ENTOMOLOGY AND SPENT 6 MONTHS IN THE FIELD IN TAIWAN AND CENTRAL AMERICA.

2) SINCE LAST REPORT I HAVE

a) ATTENDED THE MARINE BIOLOGY LAB AT THE ROCKEFELLER UNIVERSITY FOR A 10 WEEK COURSE IN WINTER '69, WHERE I STUDIED CELLULAR ASPECTS OF BRAIN FUNCTION IN OLD & YOUNG ANIMALS

b) RESULTS OF RESEARCH PUBLISHED IN DECEMBER ISSUE OF SCIENCE (VOL 166 PAGE 1529) ENTITLED "THE REGENERATION OF CELL ACTIVITIES DURING AGING IN CELLS"

18. CIVIC RESPONSIBILITIES (Local Community Activities)

NONE

19. RESERVE UNIT OF WHICH A MEMBER
NONE

20. BILLET ASSIGNED AND MONTHS IN THIS BILLET
NONE

21. CURRENT AND HOME ADDRESS
TEMPO MEDICAL DISTRICT

22. ADDRESS AT END OF LAST FISCAL YEAR
ADDRESS NONE

DATE:

23. SPECIALTY SKILLS AND QUALIFICATIONS (Ex: CIC Officer, Ship Qualified as Submarine Ship Salvage Diving Officer, Radio Officer, Parachutist, etc.)

NONE

24. NAVAL FLIGHT OR AVIATION EXPERIENCE (If Pilot/NFO)

MODEL	NO.	CLASS	PRIMARY DESIG	IN FLIGHT	TOTAL PLT HRS	TOTAL JET HRS	PLT HRS LAST 6 MOS	TOTAL CATS
NONE								

DATE OF DESIGNATION

CIVILIAN FLYING HRS. (Last 12 Mos.)

S.E. PROP	M.E. PROP	JET
NONE	NONE	NONE

DATE OF THIS FORM

X	USN-R	2100	24 JUN 42	711038	OTO 34	

WIFE AND 1 DEPENDENT CHILD — NO SECONDARY DEPENDENTS

LT JEFFREY ROBERT FOSTER
60 EAST END AVE
NEW YORK, NY 10028
0380000

8. ACTIVE MILITARY SERVICE (Include enlisted and service with United States and Allied Forces. Do not include Active Duty for Training.)

NO KOREAN EMERGENCY (25 Jun 50 to 31 Jan 55)	NO RECALLED OR EXTENDED FOR GEN. EMERGENCY (1961)	NO CALLED OR EXTENDED FOR SOUTHEAST ASIA (1965)	NO OTHER ACTIVE DUTY (3), each [illegible]

10. FOREIGN LANGUAGE PROFICIENCY (See instruction 3c. Record proficiency as L, I, T or X) NONE

LANG:	PROF:	LANG:	PROF:	LANG:

11. COLLEGE, UNIVERSITY, PROFESSIONAL OR TECHNICAL SCHOOL (Name and location)

	FROM	TO	SEM. HOUR CREDITS	DEGREE	MAJOR FIELD(S)
ST. [illegible] UNIVERSITY, [illegible]		1960	100	BA	[illegible]
[illegible] U., NEW YORK, N.Y.		1964	66		
[illegible] MEDICAL COLLEGE, N.Y.C.		1968	145	MD	MED
MT. SINAI HOSPITAL, 10TH STREET & FIFTH AVE., N.Y., N.Y. 10029					PHYSICIAN
RESIDENT, DEPT. OF PSYCHIATRY				4	

Kourlas, Mate Banquet 408530

13. CIVIC RESPONSIBILITIES, COMMUNITY ACTIVITIES

NONE

14. RESERVE STATUS OF MEMBER	15. BILLET ASSIGNED AND MONTHS IN THIS BILLET	16. COMPUTED HOLDING YOUR SERVICE RECORD
NONE	NONE	
17. ACTIVE DUTY THIS YEAR: NONE	DUTIES:	DATES:

18. QUALIFICATIONS (OOD (U) type ship, Qualified in Submarine, Ship Salvage Diving Officer, EOD, UDT, Parachutist, etc.)

NONE

19. DESIGNATION: NAVAL AVIATOR, EXPERIENCE PILOT, NFO

TYPE	HOURS	CLASS	PC LEGIO	IP FLOWN	TOTAL PLT HRS	TOTAL JET HRS	PLT HRS LAST 6 YRS	TOTAL CVLS	CIVILIAN FLT HRS (Last 12 mos)		
NONE									S.E. PROP	M.E. PROP	JET
									NONE		

DATE OF DESIGNATION

LAST BILLET

PRESENT

LSNR-R

WIFE AND 1 DEPENDENT CHILD

NO SECONDARY DEPENDENTS

LT JEFFREY ROBERT FOSTER
80 EAST END AVE
NEW YORK, NY 10028
038000

9 ACTIVE MILITARY SERVICE (Include enlisted and service with United States and Allied Forces. Do not include Active Duty for Training.)

- KOREAN EMERGENCY (25 Jun 50 to 31 Jan 55)
- RECALLED OR EXTENDED FOR BERLIN EMERGENCY (1961)
- RECALLED OR EXTENDED FOR SOUTHEAST ASIA (1968)
- OTHER ACTIVE DUTY (Specify Duties)

10 FOREIGN LANGUAGE PROFICIENCY (See instruction 3 c. Record proficiency as L, S, R or X) NONE

LANG.	READ	SPEAK	LANG.	READ	SPEAK

11 COLLEGE, UNIVERSITY, PROFESSIONAL OR TECHNICAL SCHOOL (Name and location)

FROM	TO	SEM. HOURS CREDITS	DEGREE	MAJOR FIELD OF STUDY

12 STUDENT ACCOUNTANT, INTERN, TRAINEE, APPRENTICE

EXACT TITLE OF YOUR POSITION IN Civil Service (include grade. Give present and former position if change of duties during past year)

PRESENT POSITION

NO. EMPLOYEES SUPERVISED (Present and past)

ASSISTANT DEPT OF SECURITY

3

BRIEF DESCRIPTION OF DUTIES AND RESPONSIBILITIES. INDICATE SPECIAL SKILLS OR LICENSES IN EFFECT (Bar Membership, CPA, Commission if a member of the Coast Guard, Medical or Dental Board Certification, Merchant Marine, Professional Engineer or Engineer-in-training, Registered Architect or Architect-in-training, etc.)

New York State License #20200

13 CIVIC RESPONSIBILITIES, COMMUNITY ACTIVITIES

NONE

14 DATE OF LAST DUTY AS A MEMBER

NONE

15 BILLET ASSIGNED AND MONTHS IN THIS BILLET

NONE

16 CONVENE AD DUTY FOR SERVICE SCHOOL

17 ACTIVE DUTIES PAST FISCAL YEAR (Give Dates)

NONE

DUTIES

DUTIES

18 DUTIES CANCELLED OR POSTPONED (Last 12 Mos.)

NONE

MILITARY				CIVILIAN			

John Robert Foster

OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES ex rel JEFFREY FOSTER,

Petitioner,

-against-

JAMES R. SCHLESINGER, Secretary of Defense, JOHN W. WARNER, Secretary of the Navy, and ADMIRAL JOHN N. SHAFFER, Commandant, Third Naval District, New York,

Respondents.

OPINION AND ORDER

74 Civ. 2994

APPEARANCES:

RABINOWITZ, BOUDIN & STANDARD, ESQS.
Attorneys for Petitioner
By Michael B. Standard, Esq.
Of Counsel

HONORABLE PAUL J. CURRAN
United States Attorney
Attorney for Respondents
By Louis G. Corsi, Esq.
Assistant United States Attorney
Of Counsel

KEVIN THOMAS DUFFY, D.J.

Petitioner, Jeffrey Foster, is a psychiatrist who holds the rank of lieutenant as a commissioned officer in the United States Navy. In 1966, Dr. Foster, then a medical student, enrolled

in the Ensign 1915 Program under which a medical student joins the Naval Reserve as a commissioned officer and is permitted to postpone active duty until his completion of medical school and internship. During his internship Dr. Foster enrolled in a second program, the Berry Plan, which further delayed his active service until after the completion of his residency. In the summer of 1973, as a result of administrative confusion, petitioner received a communication that unless he applied for Berry Plan status he would be called up for active duty. Thereafter, in September 1973, Dr. Foster tendered his resignation from the United States Naval Reserve. After considerable administrative confusion which has no bearing on the merits of the case, Dr. Foster's resignation was refused on March 4, 1974. On March 20, 1974, petitioner formally applied for discharge as a conscientious objector to all war.

The criteria to be applied to this application are set forth in 32 C.F.R. § 730.18. The regulation provides in pertinent part that:

> "After entering naval service, a request for discharge based solely on conscientious objection which existed but was not claimed prior to induction or enlistment shall not be considered if such beliefs satisfied the requirements for classification as a conscientious objector . . . and the member failed to request classification as a conscientious objector by the Selective Service System . . . . Claims growing out of the experiences prior to entering military service but which did not become fixed until after entry into the service will be considered."

It is Dr. Foster's argument that both his application for discharge and his earlier resignation were prompted by the crystallization in the summer of 1973 of his anti-military beliefs. It is petitioner's contention, that the process of crystallization was triggered by the concurrence of the naval notification of his impending active service and his treatment of a young girl dying of leukemia. The record consists of Dr. Foster's statement of beliefs; letters from his wife, his psychiatrist and from friends; interviews, as required by Naval regulations, with a Navy psychiatrist and a Chaplain; and a hearing before an investigating officer at which both Dr. Foster and his psychiatrist, Dr. Joel Markowitz, testified.

Despite the investigating officer's recommendation that Dr. Foster be discharged, the Chief of Naval Personnel denied petitioner's request for a discharge and ordered him to report for active duty on July 15, 1974. On the day that he was to report for duty Dr. Foster filed a petition for a writ of habeas corpus and the Navy consented to the entry of a temporary restraining order until a hearing to be held on July 25, 1974 on petitioner's request for the writ of habeas corpus, and for a preliminary injunction. Oral argument was heard on July 25, 1974, at which time the parties agreed to an extension of the temporary restraining order while the matter was sub judice.

The standard of review to be applied to the Chief of Naval Personnel's decision to deny Dr. Foster's request for a discharge was clearly set out in Nurnberg v. Froehlke, 489 F.2d 843 (2d Cir. 1973), a case which was factually very similar to the case at hand. That standard is:

> "[W]hether on this record there is a basis in fact for disbelieving petitioner's claim that his conscientious objector beliefs became fixed only when faced with the call to active service." Nurnberg v. Froehlke, 489 F.2d at 846, quoting the district court's opinion in the same case, 355 F. Supp. 1187, 1197 (S.D.N.Y. 1973).

As the court in United States ex rel. Chackman v. Laird, 469 F.2d 773, 778 (2d Cir. 1972) pointed out, an "objective basis" for disbelieving the applicant must amount to more than a mere scintilla of evidence; however, the evidence need not preponderate. Nurnberg v. Froehlke, 489 F.2d at 847. The Nurnberg court made it clear that so long as there was some evidence to support it, the decision of the military should be sustained.

The only issue then is whether or not there is some evidence in the record which would support a finding that petitioner's conscientious objection crystallized prior to his enrolling in the Ensign 1915 Program since it was this finding on which the Chief of Naval Personnel based his denial of a discharge to Dr. Foster. Petitioner points to a number of cases in which district courts have rejected the finding of the military. Most of these cases turned on incomplete records in which there was no

evidence as to when the crystallization of the petitioner's brief occurred. Cf., e.g., Bolen v. Laird, 443 F.2d (2d Cir. 197]); McGehee v. McKaney, 312 F.Supp. 1372 (D.Md. 1970); Talford v. Seaman, 305 F. Supp. 941 (D.Md. 1960). The case at hand suffers from no such deficiency in the record.

There is ample evidence of petitioner's thinking from the time before he entered the Naval Reserve up until the present. In addition to Dr. Foster's own detailed application for discharge there is his testimony, the testimony of his psychiatrist, the reports of a Naval Chaplain and psychiatrist and letters from Dr. Foster's wife and friends. There is evidence that Dr. Foster has long objected to violence. Dr. Markowitz, petitioner's psychiatrist, testified to an abhorrence of violence by petitioner which dates back to his beginning therapy fourteen years ago. Both Dr. Foster and his psychiatrist spoke of Dr. Foster's objection to the Vietnam War. Both pointed to a clipping from an article by George Wald in March, 1966 which petitioner had saved as reflective of the development of his personal philosophy of man's role in the universe. Likewise, they point to a 400 page thesis written by Dr. Foster before he entered the Ensign 1915 Program as yet another proof of the sincerity of his moral conviction. Indeed, there is no dispute as to the sincerity of petitioner's beliefs, but only as to the time of their crystallization.

To be sure there is evidence on the other side which could lead to a contrary conclusion. However, that is not the issue here. The only issue is, as stated above, whether there is a "basis in fact" to support the finding by the Chief of Naval Personnel that crystallization had occurred prior to Dr. Foster's enrollment in the Ensign 1915 Program. Moreover, much of the evidence in support of petitioner's claim of late crystallization turns on the breakdown of his psychological defense of "denial" of his obligation to the military. A similar argument failed in Nurnberg where petitioner "had the unrealistic hope that he might not be called." Nurnberg v. Froehlke, 489 F.2d at 848.

Petitioner argues that the beliefs which he held prior to entering the Navy correspond to those held by petitioners in Goodwin v. Laird, 317 F.Supp. 853 (N.D.Cal. 1970), and in McGehee v. McKaney, 312 F.Supp. 1372 (D.Md. 1969). In those cases general religious training and evidence of some reflection on the question of violence were not a basis in fact for findings of early crystallization. Clearly one's deep felt beliefs sufficient to be a true conscientious objector must begin to take shape, or at least spring from experiences which have occurred, prior to service in the armed forces even if such beliefs do not crystallize until thereafter. However, Dr. Foster's beliefs would seem to have progressed to a far more developed state than

those of the petitioners in Goodwin or McGelee.

Finally, petitioner argues that the Chief of Naval Personnel ought not to have reversed the finding of the investigating officer. This would have some validity if as was true in McGehee and Talford, both cited by petitioner, the only evidence as to crystallization was a statement by petitioner himself that crystallization occurred after entry into the military. In such a case demeanor is clearly the determinative factor and the hearing or interviewing officer's opinion as to the sincerity of the petitioner is crucial. However, in Dr. Foster's case there is considerably more evidence on which the Chief of Naval Personnel could have based his determination. This is especially true since the hearing officer expressed no opinion on crystallization, but only on Dr. Foster's sincerity as to his conscientious objection. This sincerity has never been challenged by the Chief of Naval Personnel rather, it is the length of its duration which defeats his claim.

For all of these reasons, petitioner's application for a writ of habeas corpus is denied. In light of the foregoing opinion the motion for the preliminary injunction is mooted.

SO ORDERED.

U. S. D. J.

Dated: New York, New York

September , 1974.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

UNITED STATES ex rel JEFFREY FOSTER,

Petitioner,

-against-

JAMES R. SCHLESINGER, Secretary of Defense,
JOHN W. WARNER, Secretary of the Navy,
and ADMIRAL JOHN N. SHAFFER, Commandant,
Third Naval District, New York,

Respondents.

- X

NOTICE OF APPEAL

74 Civ. 2994 (KT

S I R:

PLEASE TAKE NOTICE that the Petitioner Jeffrey Foster hereby appeals to the United States Court of Appeals for the Second Circuit from the decision and order of the Honorable Kevin T. Duffy, United States District Court, Southern District of New York, entered September 13, 1974 denying a petition for a writ of habeas corpus and a temporary and permanent injunction.

Yours, etc.

Dated: New York, N.Y.
September 19, 1974

RABINOWITZ, BOUDIN & STANDARD
30 East 42nd Street
New York, N.Y. 10017

Attorneys for Petitioner

To: Hon. Paul J. Curran
United States Attorney
Attorney for Respondents
Attention: Louis C. Corsi, Esq.
Assistant United States Attorney
United States Courthouse
Foley Square
New York, N.Y. 10007

US COURT OF APPEALS: SECOND CIRCUIT

Index No.

US,

Petitioner-Appellant,

against

Affidavit of Personal Service

SCHLESINGER, ET AL,

Respondent-Appellees.

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, Victor Ortega, being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1027 Avenue St. John, Bronx, New York

That on the 17th day of December 1974 at Foley Square, New York

deponent served the annexed Appendix upon

Paul Curran

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s) herein,

Victor Ortega

Print name beneath signature

VICTOR ORTEGA

Sworn to before me, this 17th day of December 19 74

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418850
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975